Supreme Court of the United States

No. 35

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STATE OF WISCONSER, ENSECHDERT

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Docket Entries

Complaint for Resisting an Officer

The State of Wisconsin, to the Sheriff, or any Constable of said County, or any Police Officer of the City of Milwaukee:

Whereas, Wilfred Buchanan, being first duly sworn on oath, states to the Honorable John J. Kenney, as Magistrate that James Edmund Groppi, the abovenamed defendant on the 31st day of August A.D., 1967, in the County of Milwaukee, Wisconsin, did unlawfully knowingly resist Wilfred Buchanan a duly appointed, qualified and acting police officer of the City of Milwaukee, in said County, while the said Wilfred Buchanan was then and there engaged in doing an act in his official capacity and with lawful authority, to-wit:

said Wilfred Buchanan personally observed said defendant resist Buchanan, at 900 West North Avenue, in the Ctiy of Milwaukee, in said County, to-wit: while said defendant was being carried to a police wagon after being placed under arrest, said defendant began kicking his legs, striking said officer Wilfred Buchanan in the body with his foot; that said defendant then states to said Wilfred Buchanan: "You fuckinn' Son of a Bitch, I want your number." contrary to Section 946.41 of the statutes, and against the peace and dignity of the State of Wisconsin, and prays that the said James Edmund Groppi may be arrested and dealt with according to law.

/s/ WILFRED BUCHANAN

Complaint for Resisting an Officer

Subscribed and sworn to before me this 1st day of September A.D., 1967

/s/ John J. Kenney Magistrate

I hereby find and determine that there is probable cause for the issuance of a sectoral rant in the above matter.

/s/ John J. Kenney Magistrate

Warrant for Resisting an Officer

The State of Wisconsin, to the Sheriff, or any Constable of said County, or any Police Officer of the City of Milwaukee:

Whereas, Wilfred Buchanan, has this day stated on oath, in writing to the Honorable John J. Kenney, as Magistrate that James Edmund Groppi, the abovenamed defendant on the 31st day of August A.D., 1967, in the County of Milwaukee, Wisconsin, did unlawfully knowingly resist Wilfred Buchanan a duly appointed, qualified and acting police officer of the City of Milwaukee, in said County, while the said Wilfred Buchanan was then and there engaged in doing an act in his official capacity and with lawful authority, to-wit:

said Wilfred Buchanan personally observed said defendant resist Buchanan, at 900 West North Avenue, in the City of Milwaukee, in said County, to-wit: while said defendant was being carried to a police wagon after being placed under arrest, said defendant began kicking his legs, striking said officer Wilfred Buchanan in the body with his foot; that said defendant then states to said Wilfred Buchanan: "You fuckinn' Son of a Bitch, I want your number."

contrary to Section 946.41 of the statutes, and against the peace and dignity of the State of Wisconsin, and prays that the said James Edmund Groppi may be arrested and dealt with according to law.

Now, Therefore, in the name of the State of Wisconsin, you are commanded forthwith to apprehend the said defendant named above before the County Court of Milwaukee and bring same before the Honorable Christ T. Seraphim

Warrant for Resisting an Officer

Judge, Branch 4 County Court to be dealt with according to law.

WITNESS, the Honorable JOHN J. KENNEY Magistrate of the County of Milwaukee, the 1st day of September in the year of our Lord One Thousand Nine Hundred and Sixty Seven.

/s/ JOHN J. KENNEY

Magistrate

Demand for Transfer to Circuit Court

(Filed October 12, 1967)

Now comes Hugh R. O'Connell, District Attorney of Milwaukee County by John J. Spindler, Assistant District Attorney of Milwaukee County, appearing for and on behalf of the plaintiff State of Wisconsin and sets forth as follows:

- 1. That the plaintiff STATE OF WISCONSIN is a party to this controversy.
- 2. That on the 6th day of October, 1967, the defendant demanded a trial by a jury of twelve and that less than ten days have expired from the date of said demand until the filing of this demand for transfer.

Now, Therefore, pursuant to sec. 324.17(9) Wisconsin Statutes, the plaintiff demands that the matter be transferred from the County Court of Milwaukee County to the Circuit Court of Milwaukee County and that the Honorable F. Ryan Duffy, Jr., County Court Judge, immediately cause the record and proceedings in this matter to be certified to the Circuit Court of Milwaukee County, where according to the aforementioned statute the matter shall be tried and determined as a Circuit Court action.

Dated at Milwaukee, Wisconsin, this 11th day of October, 1967.

HUGH R. O'CONNELL District Attorney

JOHN J. SPINDLER
Assistant District Attorney
Attorneys for Plaintiff

Date of trial:

October 19, 1967, at 9:00 a.m.

Resisting an Officer

(Filed October 17, 1967)

I, Raymond W. Fleming, Chief Deputy Clerk of the County Court of the County of Milwaukee, do hereby certify that the foregoing is a correct copy of the record, and of all entries, minutes, orders and proceedings before said County Court on the arrest and examination of the above named defendant; that I have compared the same with the original, and that it is a true transcript threrefrom and of the whole thereof.

I further certify that the Complaint, Warrant, Evidence and Recognizances taken before and by said County Court in this matter, and all other papers hereunto annexed, are the originals; and all the papers filed therein, and the same are herewith returned to the Clerk of the Circuit Court of the City and County of Milwaukee, pursuant to law.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County Court at the City of Milwaukee, this 12th day of Oct. A.D. 1967.

/s/ RAYMOND W. FLEMING
Chief Deputy Clerk of
Courts, Criminal-Misdemeanor-Traffic
Divisions

By /s/ (Illegible)
Deputy

Ruling on Motion for Change of Venue

(Filed October 3, 1967)

CHARGE: RESISTING AN OFFICER

Ruling on Motion for Change of Venue in the above entitled action rendered on October 2, 1967, by the Honorable F. Ryan Duffy, Jr., County Court Judge.

APPEARANCES:

John J. Spindler—Assistant District Attorney, appearing for the State of Wisconsin.

James M. Shellow and William M. Coffey—Attorneys for Defendant.

Defendant not in Court. Howard E. Lutz—Official Reporter.

Proceedings

Mr. Shellow: Your Honor, the motion has been made by the defendant for a change in venue on the grounds of community prejudice. It is my understanding that the Court is ready to rule.

The Court: Well, this is the matter of the State of Wisconsin, Plaintiff, vs. Father James E. Groppi; being Case Number 2-63208, scheduled today for a ruling on the motion for a change of venue. Such motion being filed with this Court I believe last Monday, is that not correct?

Mr. Shellow: Yes.

The Court: And was here today for a ruling on those motions, written motions.

So, therefore, the change of venue as asked for in the motion for a change of venue will be denied; it not being provided for in the Wisconsin Statutes.

Also filed with the Court is a Findings of Fact and Conclusions of Law this date for signature of the Court.

And I'll leave that unsigned.

Mr. Shellow: All right. Your Honor, it's my understanding that this motion is being denied because the statute will not permit a change of venue on the grounds of community prejudice and that is the only reason it's being denied?

The Court: No, I'm denying the motion for a change of venue because this is a misdemeanor case and not a felony. And the Wisconsin Statute does not provide for a change of venue in a misdemeanor matter.

Mr. Shellow: Thank you, your Honor.

The Court: Not in a misdemeanor matter; a felony only.

Judgment Roll #1

(See Opposite)

rollowing Pursuant to Section 253.19 Circuit The original complaint, warrant and all other papers in this case Information filed, capias issued and returned on same day by Attys. for Prosecuting Ren. F. Ryen Duffy, Jr. Presiding, Branch 12 County Court Misslemeanor Traffic Diffilm of theCircuit Court temporary RESISTING. AN OFFICER COUNTY OF MILWAUKEE involved STATE OF WISCONSIN Oudge, CIRCUIT COURT OFFENSE: TIMES THE upon you to act of the issues The Hon.M. J. Steffes Presiding. ney in court. Dear Judge Duffy: of Branch 1] KEESTAIT DISTRICT ATTOCKEY PARSENT from the County Court, Milwaukee County, received and filed. Judge hereby Presiding THE STATE OF WISCONSIN of Milwaukee, Attorney Jacobson JACES PECENTE GROPE John Lauerman Defendant with 1122 E. Clarke Oct. 12, 1957 for the County action herein Deputy-Sheriff. October 18 I, Herbert J Court Judge ED 11-16-30 Thomas OCT 1 8 1567 067 30

from the County Court, Milwaukee County, received and filed.

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Deputy_Sheriff_

he following Pursuant to Section 253.19 Circuit of theCircuit Court temporary involved in t Oudge, 48 4 Circult Court upon you to act J. Steffes Presiding.
Dear Judge Duffy:
Judge of Branch 11 of Presiding Judge Stef hereby in court. The Hon. H. of Milwaukee, Sincerel Attorney Steffes, for the County action herein. I, Herbert J. October 18 Court Judge Defendant

Ren. F. Ryen Duffy, Jr. Presiding, Branch 12 County Court Mindemeanor Traffic Division ASSISTANT DISTRICT ATTORNEY PASSENT IN COURT FOR THE STAILS OCT 30 1387 Clerk's Fees

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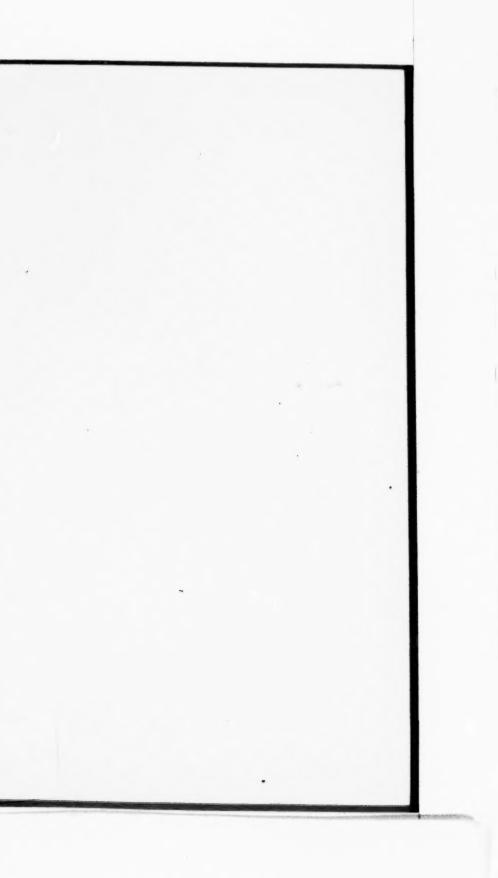
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Judgment Roll #2

(See Opposite)



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County of Milwaukee

CIRCUIT COURT

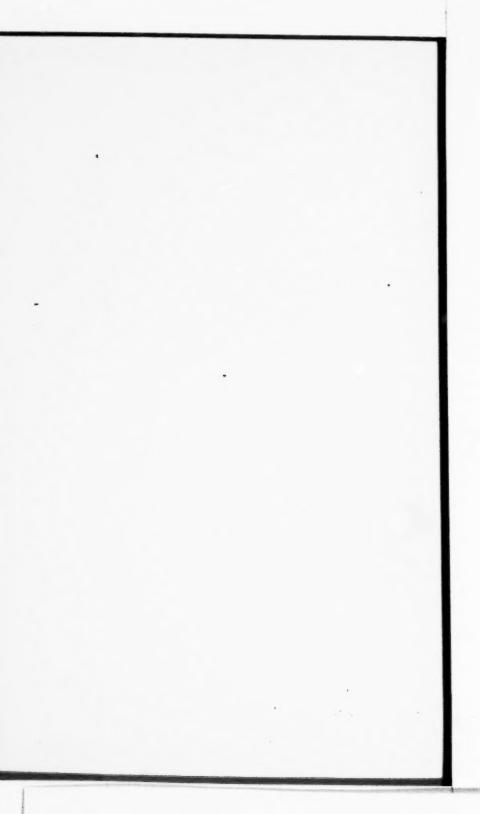
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Judgment Roll #3

(See Opposite)



The original complaint, warrant-and-all-other-papers-in-this-case

from the County Court, Milmankee-County received and filed

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from-the-County-Court, Milwaukee-County-received-and-filed-	3 HON. F. RYLL DUN. 3 HON. F. RYLL DUN. 2 Week at a Colored Dunes of Street Dunkers	Attended by lesselvet the teams of the allerance of the attended by the attend	Clerk's Fees Capias Sub. Def. Sub. Def. Witness — Prosecution — day each heerpreter Attorney Fees Prosecution — day each heerpreter

18 2.1 DEMENT ROLL County of Milwaukee

Judgment Roll #4

(See Opposite)

James Edvined Hogyei

STATE OF KISCONSIN CIRCUIT COURT COUNTY OF MILWAUKEE

OFFENSE:

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The original complaint warrant and all other papers in this case from the Courty-Court, Milwest toe-County received and filed.

Information fitted, eaping issued and returned on same day by

Deputy Shoriff

ASSISTANT DISTRICT ANTORNIN FARENT IN COURT FOR THE STATE FEB 12 SCHOOL F. RYAN DUFFY JK. 6

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Deputy Shoriff

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Motion

(Filed September 14, 1967)

Now comes the defendant in the above-entitled cause by his attorneys Shellow, Shellow & Coffer, and, upon all of the files, records and proceedings heretofore had herein and upon the affidavit submitted *infra*, respectfully moves this Court for an order changing the venue of this cause to another judge and another county where the prejudice complained of does not exist.

Respectfully submitted,

Fr. James Groppi By: Shellow, Shellow & Coffey

Affidavit of James Groppi

(Filed September 7, 1967)

STATE OF WISCONSIN, MILWAUKEE COUNTY, 88.:

James Groppi, being first duly sworn on oath, deposes and says, that he is the defendant in the above-entitled cause; that he has reason to believe and does believe that he cannot receive a fair and impartial trial before the Honorable Christ T. Seraphim, County Judge, nor in the County of Milwaukee, and makes this affidavit in support of his motion to change the venue of this cause to another judge and another county where the prejudice complained of does not exist.

/s/ Fr. James E. Groppi

Subscribed and sworn to before me this 14th day of September, 1967.

's/ (Illegible)
Notary public, Milwaukee Cty., Wis.
My commission is permanent.

Findings of Fact and Conclusions of Law

The defendant stands charged with a violation of Sec. 946.41 (1) Wis. Stat.—Resisting an Officer. The offense charged is a misdemeanor. The defendant has moved this Court for a change of venue to another county and in support of this motion has asserted that massive news coverage of his activities will preclude a fair and impartial trial in Milwaukee County.

The Court finds the following as facts:

- 1. During the past six months there has been extensive and continuous news coverage of the activities of this defendant. This news coverage has been in newspapers of general circulation in the community, on radio and on television; the activities of the defendant have been the subject of editorial comment.
- 2. As a consequence of the aforesaid news coverage, the defendant is the most controversial public figure in Milwaukee County.
- 3. As a consequence of the aforesaid news coverage, the defendant is the subject of extensive discussion throughout the community and most persons have expressed views concerning his conduct.

The Court concludes as a matter of law:

- 1. The defendant will not be able to obtain a fair and impartial trial at this time in Milwaukee County.
- 2. In considering the motion of the defendant for a change in venue this Court is bound by the provisions of Sec. 956.03(3) Wis. Stat.
- 3. The provisions of Sec. 956.03(3) Wis. Stat. permit a change of venue on the grounds of community prejudice only in felony prosecutions.

21a

Findings of Fact and Conclusions of Law

 This Court is without power to grant a motion for a change of venue on grounds of community prejudice.

It Is Ordered that the defendant's motion for a change of venue be and hereby is denied.

Dated at Milwaukee, Wisconsin, this day of October, 1967.

BA	THE	COURT:		

Notice of Motion

(Filed September 26, 1967)

To:

HUGH R. O'CONNELL, Esq. District Attorney Milwaukee County Safety Building Milwaukee, Wisconsin

PLEASE TAKE NOTICE that on the 2nd day of October, 1967 at 9:00 o'clock in the forenoon or as soon thereafter as counsel may be heard, the undersigned will bring on for hearing before the Honorable F. RYAN DUFFY, JR., County Judge, a motion to change the venue of this cause, a true copy of which is hereto annexed.

Dated at Milwaukee, Wisconsin this 25th day of September, 1967.

Shellow, Shellow & Coffey Attorneys for Defendant

P. O. Address 660 East Mason Street Milwaukee, Wisconsin 53202 271-8535

Motion for Change of Venue

Now comes the above-named defendant, Fr. James E. Groppi, by Shellow, Shellow & Coffex, his attorneys, and moves this Court for an order changing the venue of this prosecution to a county where community prejudice against this defendant does not exist and where an impartial jury trial can be had.

That said motion is based upon all the records, files and proceedings heretofore had in this action and upon the

affidavit of defendant hereto annexed.

As a further basis for said motion, defendant requests that this Court take judicial notice of the massive coverage by all news media in this community of the activities of this defendant and such activities as have been related to him, or, in the alternative, that the defendant be permitted to offer proof of the nature and extent thereof, its effect upon this community and on the right of defendant to an impartial jury trial.

Respectfully submitted,

FR. JAMES E. GROPPI

By: (Illegible)

SHELLOW, SHELLOW & COFFEY Attorneys for Defendant

Affidavit of James E. Groppi

STATE OF WISCONSIN, MILWAUKEE COUNTY, 88.:

Fr. James E. Groppi, being first duly sworn, on oath, deposes and says:

- That he is the defendant in the above-entitled action; that this affidavit is made in support of defendant's motion to change the venue of the prosecution of this cause.
- 2. That affiant has fully and fairly stated the case in this action to James M. Shellow, his attorney, who resides in the City and County of Milwaukee, Wisconsin, and that, upon such statement thus made, affiant is advised by his said counsel and verily believes that he has a valid and substantial defense to said prosecution, upon the merits, and to the whole thereof.
- 3. That an impartial jury trial of this prosecution can not be had in Milwaukee County in which this action is pending, as this affiant has reason to believe and does verily believe; and that the reasons and grounds of his belief are as follows:
- a. That affiant has been active in this County in support of the efforts of Negro citizens to obtain civil rights.
- b. That affiant is the advisor to the Youth Council of the Milwaukee Chapter of the National Association for the Advancement of Colored People, which said Youth Council has been active in this County in the same area.
- c. That the activities and actions of affiant and said Youth Council have received massive and frequently ad-

Affidavit of James E. Groppi

verse news coverage and publicity by all of the news media in Milwaukee County.

- d. That some of said news media have published editorial criticism of the activities of affiant and said Youth Council, thereby further arousing community prejudice.
- e. That by reason thereof and by reason of the feelings and prejudices engendered thereby, community prejudice against affiant exists in Milwaukee County sufficient to make it impossible for affiant to have a fair and impartial jury trial in said County, as guaranteed to him by the Sixth and Fourteenth Amendments to the United States Constitution.

Fr. James E. Groppi Fr. James E. Groppi

(Sworn to September 26, 1967.)

Letter Dated October 18, 1967

CIRCUIT COURT CHAMBERS
Branch 11 Second Judicial Circuit
Criminal Court Branch
Safety Building
Milwaukee, Wisconsin 53233

Herbert J. Steffes Senior Judge Criminal Court Branches

October 18, 1967

Hon. F. Ryan Duffy, Jr. County Court Judge, Br. 12 Misdemeanor—Traffic Division Safety Building Milwaukee, Wisconsin

Dear Judge Duffy:

Pursuant to Section 253.19, I, Herbert J. Steffes, Presiding Judge of Branch 11 of the Circuit Court in and for the County of Milwaukee, hereby call upon you to act as a temporary Circuit Court Judge to hear, try and determine all of the issues involved in the following action:

Letter Dated October 18, 1967

STATE OF WISCONSIN VS JAMES EDMUND GROPPI County Court No. :-63208, and Circuit Court No. G-4718; RESISTING AN OFFICER, Section 946.41.

Sincerely,

H. J. STEFFES. H. J. Steffes, Circuit Judge, Branch 11

HJS:bmd cc: Hon. Robert W. Hansen, Chairman, County Board

of Judges Thomas Jacobon for

Defendant

Notice of Motion

BARBEE AND JACOBSON Attorneys at Law

To:

HUGH O'CONNELL District Attorney Safety Building Milwaukee, Wisconsin

PLEASE TAKE NOTICE that on the 30th day of October, 1967, at 2:15 o'clock in the afternoon, or as soon thereafter as counsel may be heard, we shall appear before the Honorable F. Ryan Duffy, Jr., Judge of the Circuit Court, in his courtroom, of the Milwaukee County Safety Building at Milwaukee, Wisconsin, and shall present the motion, true copy of which is attached hereto.

Dated at Milwaukee, Wisconsin, this 30th day of October, 1967.

BARBEE & JACOBSON
Attorneys for Defendant
110 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Now cames the above named defendant in the above entitled action and moves to dismiss, and for grounds to dismiss says:

1. That the Court lacks jurisdiction over the defendant in that Section 324.17(9), Wisconsin Statutes, whereunder the instant case has been transferred from Milwaukee County Court to the present Court sitting as an acting Circuit Court, is unconstitutional in its application to the present case before said Court in that said defendant's rights under the Fourteenth Amendment, United States Constitution, is violated thereby.

Dated at Milwaukee, Wisconsin, this 30th day of October, 1967.

BARBEE & JACOBSON
Attorneys for Defendant
110 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Exhibit Annexed to Notice of Motion

(See Opposite)

KOUNTY JUNGE MANCH 12
MANNAUKEE COUNTY NE. DEGETOVE G-471.8 E- STATE #3 DETENSE # STATE # STATE CEFENSE. Sur of

Notice of Motion

To: Hugh O'Connell District Attorney Safety Building Milwaukee, Wisconsin

PLEASE TAKE NOTICE that on the 4th day of January, 1968, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, we shall appear before the Honorable F. Ryan Duffy, Jr., Judge of the Circuit Court, in his courtroom, of the Milwaukee County Safety Building at Milwaukee, Wisconsin, and shall present the motion, true copy of which is attached hereto.

Dated at Milwaukee, Wisconsin, this 4th day of January, 1968.

BARBEE & JACOBSON
Attorneys for Defendant
110 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Motion for Change of Date

Now comes the above named defendant in the above entitled action and moves the Court for a change of venue, and for grounds for change of venue says:

1. The attached articles from the Milwaukee Journal, December 11, 1967 and the Milwaukee Sentinel, December 12, 1967 relating to the Court's granting defendant's counsel Motion for Mistrial; upon information and belief the present jury panel is the same jury empaneled to hear the aforesaid proceedings and now is prejudiced so that defendant cannot receive a fair and impartial hearing on the re-trial before the same jury panel.

BARBEE & JACOBSON
Attorneys for Defendant
110 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Exhibit Annexed to Notice of Motion

(See Opposite)

n Father Groppa Case IS MICE

An atterney for Father the nergor's preclamation handland.

Jage, F. Groppi, who is not nightfung reaches. He charged with resisting arter, boosing decanatization asked for a relistrial Monday.

Police accused him of become norming because the prosecut in g professe and lecking the armorphy two Negroes on a not godly.

20 member Jury panel. County Jacobion argued that Father Jurge F. Ryan Duffy, ir., denied Groppi was being desied his the motion.

Anty. Thomas Jacobson by all the citizens of the constitutional right to be tried constitutional right to be tried moved that a mistrial be definantly because John Lauer-clared after an all-white jury of man, an assistant district attorious welected before Duffy.

Father Groppi, adviser to the Liad field not raise racial cueed of resisting arrest in conquestions, but that the jury nection with an incident Aug would be asked only to decide 31 in the 900 block of W. North on a criminal charge against

31 in the 900 block of W. North on a criminal charge against av.

Father Groppi. He said he clid.

He was among about 30 peo not strike the prospective juple arrested then for violating/rors because of their race.

Mistrial Ruled Groppi Case

LICIE

A mistrial was declared Monday in the circuit court case of Father James E. Groppi when one of the 12 jurors became ill minutes after testinony start-

No alternate jurors had been named. Father Groppi had been charged with resisting arrest.

ir., sitting as a circuit judge, declared the mistrial after Defense Atty. Thomas Jacobson refused to continue with only County Judge F. Ryan Duffy II jurors.

Lauerman, an assistant district attorney, had refused to seat the only two Negroes on a 20 member Jury panel. Earlier, Duffy had denied a motion for a mistrial by Jacob-son on the ground that John H.

Wisconsin law gives circuit judges the option of naming a 13th juror as an atternate, but a court source called it "highly a court source called it "highly unusual" to name an alternate in a misdemeanor case.

and rescheduling the trial for Jan. 4, Duffy remarked to a re-porter: "I've had 150 jury trials since I've been on the bench, After declaring the mistrial and this is the first time a juror has been sick.

Advancement of Colored People (NAACP), was among 134 persons arrested during an open housing march in the 900 block of W. North av. on Aug. Father Groppi, adviser to the Milwaukee youth council of the National Association for the "But next time, I'll pick 13."

nan accused the priest of kick-ing him while he was being violating a ben against night-time marches imposed by May-Patrolman Wilfred G. Bucha carried to a patrol wagon for or Maier.

Police Sgt. Frank Miller wa. 0 7 2104 being questioned by when the alling juror — G. J. Ellingson, 37, of 21, J. C. West Allis — West Allis

was participating in housing demonstration.

Tuesday, December 12, 1967

Declared a Wistria Father Groppi Case

homas Jacobson refused to trial be declared after an all-gree to a trial with caly II ju white jury of four women and rrs.

Because of a crowded court, Duffy.

Groppi, charged with resisting cobson's raction for a mistrial because the prosecuting attorance.

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OVERSIZE PAGE - SEE NEXT FRAME FOR REMAINDER OF PAGE

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Duffy recessed the proceedings. When Ellingson still felt-

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MILWAUKEE SEITT

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Notice of Motion

To: Hugh O'Connell District Attorney Safety Building Milwaukee, Wisconsin

PLEASE TAKE NOTICE that on the 8th day of February, 1968, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, we shall appear before the Honorable F. Ryan Duffy, Jr., Judge of the Circuit Court, in his courtroom, of the Milwaukee County Safety Building at Milwaukee, Wisconsin, and shall present the motion, true copy of which is attached hereto.

Dated at Milwaukee, Wisconsin, this 10th day of January, 1968.

Attorneys for Defendant
110 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Now comes the above named defendant in the above entitled action and moves to dismiss, and for grounds to dismiss says:

- 1. Section 956.03(3) Wisconsin Statutes is unconstitutional on its face and as applied in that prejudice in the community is not lessened just because defendant is charged with a felony as opposed to a misdemeanor; the legal harm said statute attempts to correct is the fact community prejudice prevents defendant in a criminal proceeding before a jury from obtaining a fair and impartial trial.
- 2. The present matter is a misdemeanor transferred to the Circuit Court by the Milwaukee County District Attorney and assigned to the Honorable F. Ryan Duffy to sit as an acting Circuit Court Judge.

Dated at Milwaukee, Wisconsin, this 10th day of January, 1968.

Barbee & Jacobson
Attorneys for Defendant
110 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Notice of Motion

PLEASE TAKE NOTICE that on the 8th day of February, 1968, at 9:00 o'clock in the forenoon, or as soon thereafter as counsel may be heard, we shall appear before the Honorable F. Ryan Duffy, Jr., Judge of the Circuit Court, in his courtroom, of the Milwaukee County Safety Building at Milwaukee, Wisconsin, and shall present the motion, true copy of which is attached hereto.

Dated at Milwaukee, Wisconsin, this 10th day of January, 1968.

Barbee & Jacobson

Attorneys for Defendant

110 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Now comes the above named defendant in the above entitled action and moves to dismiss, and for grounds to dismiss says:

- 1. The proclamation of Mayor Henry Maier dated August 30, 1967 which formed the basis for defendant's arrest herein is unconstitutional on its face in that it violates defendant's rights of freedom of speech, assembly, and the right to petition his government for a redress of grievances under the First and Fourteenth Amendments to the United States Constitution.
- 2. The proclamation of Mayor Henry Maier is unconstitutional as applied to the defendant's conduct, in that it violates defendant's rights under the First and Fourteenth Amendments to the United States Constitution.
- 3. The proclamation of Mayor Henry Maier is unconstitutional on its face and as applied in that it is vague, uncertain and fails to establish any ascertainable standard of guilt contrary to the due process clause of the Fourteenth to the United States Constitution.
- 4. The proclamation of Mayor Henry Maier is unconstitutional on its face and as applied in that it is overbroad and encompasses within its coverage activity which is clearly protected by the guarantees of the First Amendment to the Constitution of the United States, contrary to the due process clause of the Fourteenth Amendment to the United States Constitution. The proclamation permits and encourages executive or judicial officials to discriminate against defendant by reason of racial identification or of political beliefs and ideas, and to intimidate and harass by

arrest, detention, brutality, excessive bail, and prosecution or the threat thereof, defendant in the exercise of his rights of free speech, assembly, association and petitioning his government for redress of grievances, to express unpopular or unorthodox views on public issues of vital concern or to protest and oppose certain policies of the United States, the State of Wisconsin or the City of Milwaukee on vital publice issues, contrary to the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

- 5. The proclamation of Mayor Henry Maier is unconstitutional as applied to defendant and as applied violates defendant's rights under the First and Fourteenths to the United States Constitution.
- 6. The arrest under the proclamation of Mayor Henry Maier is basically for the unlawful purpose of depriving defendant of his rights of freedom of speech, assembly, association and petitioning his government for a redress of grievances guaranteed by the First and Fourteenth Amendments to the United States Constitution. Further enforcement of the present charges based on defendant's invalid arrest pursuant to the proclamation of Mayor Henry Maier will have the effect of punishing defendant now threatened with prosecution for the exercise of rights, privileges and immunities secured to him by the Constitution and laws of the United States; has and will deter defendant from the future exercise of his rights, privileges and immunities; has encouraged and will encourage the State, County and/or local officials acting under color of law, to engage in further acts of intimidation, harassment, threats of violence, threats of arrest, and other actions

meant to prevent and deter defendant from the exercise of his rights, privileges and immunities.

- 7. The arrest and attempted prosecution has been and is being carried on with the basic purpose and effect of intimidating and harassing defendant and punishing him for and detering him from exercise of his constitutionally protected rights of free speech and assembly and association to:
 - Oppose and protest the policies of the United States Government, the State of Wisconsin, County of Milwaukee, and City of Milwaukee, with regard to segregation and racial discrimination against Negroes, including, but not limited to, discrimination in the purchase, lease, rental or sale of housing.
 - 2. Or otherwise publicly express unpopular and unorthodox views on public issues of vital concern.

Dated at Milwaukee, Wisconsin, this 10th day of January, 1968.

BARBEE & JACOBSON

Attorneys for Defendant
110 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Order to Show Cause

(Filed February 7, 1968)

Upon the reading and filing of the affidavit affixed hereto and on motion of John J. Fleming, City Attorney, by John F. Kitzke and Thomas E. Hays, Assistant City Attorneys,

It is ordered that the defendant by his attorney, Thomas M. Jacobson, appear before the Honorable E. Ryan Duffy, Jr., Judge of County Court, Branch 12, in his courtroom in the Safety Building, on the 7 day of February, 1968, at 4 o'clock, P.M. or as soon thereafter as counsel can be heard to show cause why the subpoena heretofore issued on behalf of the defendant and ordering the appearance of Henry W. Maier, Mayor of the City of Milwaukee before this court in the above entitled action on February 8, 1968 at 3:00 o'clock p.m. should not be quashed.

It is further ordered that a copy of this order to show cause and the affixed affidavit be served on the defendant's counsel, Thomas M. Jacobson, 110 E. Wisconsin Avenue, not less than 1 hour prior to the time set for hearing.

Dated at Milwaukee, Wisconsin, this 7 day of February, 1968.

BY THE COURT,

F. Ryan Duffy, Jr., Judge.

Affidavit of Henry W. Maier

STATE OF WISCONSIN, MILWAUKEE COUNTY, SS.:

HENRY W. MAIER, being first duly sworn on oath, deposes and says:

- 1. That at all times herein mentioned he was and is the Mayor of the City of Milwaukee.
- 2. That at approximately 9:15 a.m., February 7, 1968, he was served with a subpoena to appear before the Judge of County Court, Branch 12, on February 8, 1968, at 3:00 o'clock p.m. in the above entitled action.
- 3. That on information and belief such action constitutes a prosecution by the State of Wisconsin of the defendant for violation of Section 946.41 of the Wisconsin Statutes (resisting or obstructing an officer) and that such alleged offense took place on the 31st day of August, 1967, at approximately 8:40 o'clock p.m. at or about North 9th Street and West North Avenue in the city and county of Milwaukee, State of Wisconsin.
- 4. That the affiant was nowhere in the vicinity of the aforesaid arrest at or about said time and has no personal knowledge whatsoever of any of the facts or circumstances surrounding the same.
- 5. That the affiant verily believes that there are no facts or information within his knowledge to which he could testify or in anyway assist the Court in arriving at its decision.

Affidavit of Henry W. Maier

6. That the affiant is engaged in many and sundry matters of great importance to the citizens, taxpayers and general public of the City of Milwaukee in his capacity as Mayor and it is for that reason this affidavit is made for the purpose of obtaining an order to show cause why the aforementioned subpoena should not be quashed.

HENRY W. MAIER Henry W. Maier

Subscribed and sworn to before me this 7th day of February, 1968.

(Illegible) Notary Public, Milwaukee County, Wis. My commission expires: January 25, 1970.

Exhibit Annexed to Order to Show Cause
(See Opposite)



E. RYAN DUTTY, WELL EEB 2 Stale Perus? 1 0

Exhibit Annexed to Order to Show Cause

PROCLAMATION

Whereas, on the night of August 28, 1967, disturbances occurred in the City of Milwaukee arising out of certain parades, marches and demonstrations within the City of Milwaukee; and

Whereas, on Tuesday, August 29, 1967, further disturbances existed within the City of Milwaukee resulting from parades, marches and demonstrations; and

Whereas, the foregoing have resulted in civil commotion and disturbance detrimental to the maintenance of public order endangering life, damaging property, impairing transportation and interfering with police and fire protection and other vital services of the City of Milwaukee; and

Whereas, such disturbances are likely to continue and present an increasing and imminent danger to the public health, safety and welfare of the City of Milwaukee;

Now, THEREFORE, pursuant to the power vested in me by the Laws of the State of Wisconsin and the Ordinances of the City of Milwaukee, and upon finding that an emergency exists within the City of Milwaukee and will continue to exist therein presenting a clear and present danger to the health, safety, welfare and good order of the citizens of the City of Milwaukee and their property, and a reasonable limitation upon marches, demonstrations, parades and other similar activities is necessary and expedient;

Exhibit Annexed to Order to Show Cause

I Do HEREBY PROCLAIM AND ORDER AS FOLLOWS:

- 1. That marches, parades, demonstrations, or other similar activities are prohibited upon all public highways, sidewalks, streets, alleys, parks and all other public ways and public grounds within the City of Milwaukee between the hours of 4:00 o'clock P.M. and 9:00 o'clock A.M., commencing on this date, Wednesday, August 30, 1967, at 4:00 o'clock P.M. and terminating thirty (30) days thereafter.
- 2. Any person violating any provisions of this order and proclamation shall be subject to arrest and prosecution, and upon conviction thereof, shall be subject to the penalties provided by law.

And I do hereby direct that a copy of this order and proclamation be filed as a public record in the office of the City Clerk of the City of Milwaukee.

Dated at Milwaukee, Wisconsin, this 30th day of August, 1967, at 2:52 o'clock P.M.

HENRY W. MAIER, Mayor

Certification

CITY OF MILWAUKEE
OFFICE OF THE CITY CLERK
ROOM 205, CITY HALL, MILWAUKEE, WISCONSIN 53202
Phone: 276-3711 Ext. 2221

Ray Markey City Clerk

Chester P. Schmidt Deputy City Clerk

February 7, 1968

I hereby certify that the attached is a copy of the Proclamation issued by His Honor Henry W. Maier, Mayor of the City of Milwaukee on August 30, 1967.

RAY MARKEY City Clerk

Defendant's Requested Instructions

I. Resisting or obstructing an officer is defined by section 946.41 Wis. Stats. 1967. It is a separate offense from the mayor's proclamation violation for which the defendant was initially placed under arrest. No inferences as to defendant's guilt or innocence on the resisting charge should be drawn from the mere fact defendant was placed under arrest for violating the mayor's proclamation. Both offenses are separate and distinct from the other and each has its own set of elements which must be proved in order to constitute a violation thereof. You are instructed in this case to disregard defendant's arrest for the mayor's proclamation and decide the guilt or innocence of the defendant solely on the facts pertinent to the resisting arrest charge.

Verdict

We, the Jury, find the defendant, James Edmund Groppi, guilty in manner and form as charged in the complaint.

Dated this 9 day of Feb., A.D., 1968.

C. J. MUCK

Foreman or Forelady

Order of the Court, Providing Probation, Etc.

At a regular term of the County Court, Misdemeanor Division, held at the City of Milwaukee, in the County of Milwaukee, State of Wisconsin, the defendant James Edmund Groppi was convicted of the offense of Resisting an Officer and

It appears to the satisfaction of the Court that the defendant shall not suffer the penalty provided by law;

It is Ordered and Adjudged:

1st. That the sentence in this case is hereby suspended and execution stayed for the full term of 6 months House of Correction—stayed 2 yrs. probation, subject to the provisions of the Laws of this state, the rules and orders of the Court, and such conditions of probation as were ordered in this case by the Court, including—

2nd. That the defendant is hereby placed on probation for a term of 6 months House of Correction—stayed 2 years probation & costs.

It is Further Ordered. That this order be forthwith filed and recorded in the office of the clerk of this Court.

And in addition thereto—sentenced to pay a fine of 500 dollars and costs or 6 months House of Correction in default of payment. Fine and costs to be paid in 24 hours.

Dated at Milwaukee, Wisconsin, this 12 day of February, 1968.

By the Court,
F. RYAN DUFFY, JR.
Acting Circuit Court Judge.
Branch 12

Motion After Verdict

Comes now the defendant in the above-entitled action by his attorney, Thomas M. Jacobson, and, upon all of the files, records and proceedings heretofore had herein, respectfully moves this Court for the entry of an order setting aside the jury verdict of guilty and entering a verdict of not guilty, or in the alternative granting to the defendant a new trial, and

As grounds therefor respectfully shows to the court:

- That the trial court erred in denying the defendant's Motion for Change of Venue on the ground of community prejudice; said motion was denied on the ground that the statute applied only to felony cases.
- 2. That §956.03 (3) Wis Stat. is unconstitutional in that it denies to a defendant who is charged with a misdemeanor offense a fair trial as required by the Fourteenth Amendment of the United States Constitution.
- 3. That the trial court erred in refusing to accept the defendant's affidavit of prejudice filed against the court sitting as an acting Circuit Court judge.
- 4. That the trial court erred in quashing the defendant's subpoena upon Henry W. Maier, Mayor of the City of Milwaukee, whose testimony was material to the defense.
- The trial court erred in precluding the defendant from introducing evidence upon the trial that the Mayor's proclamation, as applied to the defendant, was unconsti-

Motion After Verdict

tutional; said defendant's arrest was made for a violation of such proclamation.

- 6. That the trial court erred in admitting, over defendant's objection, prejudicial evidence of other crimes:
 - a. Evidence was introduced upon the trial of the defendant's alleged use of profanity directed toward the arresting officers.
 - b. Evidence was introduced upon the trial concerning the defendant's arrest for his alleged violation of the Mayor's proclamation.
 - c. Evidence was introduced upon the trial relating to the conduct of the defendant in going "limp" after his arrest, said conduct was not the basis of his being charged with resisting arrest.
- That the evidence adduced upon the trial was not sufficient to support the jury verdict.
- 8. That the trial court erred in admitting in evidence, over the defendant's objection, incompetent and immaterial testimony.
- 9. That the jury verdict of guilty was based on incompetent evidence and the finding of guilty was based on evidence that did not pertain to the charge for which the defendant was on trial. (See exhibit A attached hereto.)

Motion After Verdict

10. That a new trial should be granted in the interest of justice.

Dated at Milwaukee, Wisconsin this 12th day of February, 1968.

Respectfully submitted,

FR. JAMES E. CROPPI, Defendant

By:

THOMAS M. JACOBSON
Thomas M. Jacobson
Counsel for Defendant

Exhibit Annexed to Motion

(See Opposite)

Priest Guilty in Arrest Case

Groppi's attorney, asked that the jury be polled. Each juror confirmed the decision.

Defore the jury returned its verdict, Duffy told about 30 courtroom spectators, "What-ever the decision, I want dece-rum in the court on the part of everyone."

Many of the spectators E were members of the Milwan Nkee NAACP youth council, a sponsors of the open housing demonstrations. Father Gropping is the council's adviser.

Police in Court

limp.

Police officers were sta-

the time of his arrest he was going to city hall to question Maier about the constitution-ality of the ban on marches.

When police seized him, Fa-ther Groppi said, he went Arrests Are Listed

thoned in the courtroom and in record dating to 1965. Court the corridor outside.

Youth council members surfounded. 1965, standing on a rounded Father Groupi after highway and interfering with the verdict and walked with traffic, found guilty and fined him from the courtroom on \$10; Dec. 7, 1965, disorderly Father Groppi has an arrest

bat without bail.

building. He was released fined \$100 and costs, May 6, building. He was released fined \$100 and costs, May 6, 1967, resisting an officer and Father Groppi was arrested obstructing an officer, found Aug. 31 when he led a march guifty of fostructing and not in definite of Major Maier's guilty of resisting, fined \$100 and costs; July 31, 1867, disorpace and costs; July 31, 1867, disorpared on the city. The derly conduct, charge amenciant the city. The derly conduct, charge amenciant constrations in the city. The derly conduct, charge amenciant constrations in the city. The derly conduct, charge amenciant constrations and that at emergency resolution, found guilty, appeal pending: Aug. 31, 1957, violation of mayor's proclamation banning demon-Sept. 1, 1967, violation of of mayor's proclamation, court action pending strations and disorderly

Resisted Policemen ury Decides Groppi

A circuit court jury found that jury or any other jury. Father James E. Groppi guilty was respected on that jury Friday of resisting arrest dure not made a half day trial that the the forther man, but that far and a half day trial that the the forther man, but that far catholic priest kicked and cursed them when they took himself. He said Father Groppi had convicted cursed them when they took himself. He said Father Groppi had convicted him into custody. He denied had admitted on the witness resisting or cursing.

Father Groppi faces a poss when police tried to arrest sible maximum penalty of a himself. He said Father Groppi faces a poss when police tried to arrest sible maximum penalty of a him. Sitting down is a pessive or both. County Judge F. After the verdict was given, Ryan Duffy, fr. who sat as a Thomas Jacobson, Father case, set Monday for hearing the Turn to Groppi, pege 8, col. 6 motions and possible sentence.

Ing.

The jury of nine men and
three women deliverated 2 the verdict at 4:45 hours and 35 mirutes before Groppi when it was read. p.m. Father returning

Asked by a reporter to com-Priest "Isn't Surprised"

Police in Court

tioned in the courtroom and in Police officers were sta-

Youth council members sur- June 4, 1965, standing on a rounded Father Groppi after highway and interfering with the verdict and welfact with traffic, found guilty and fined him from the courtroom on \$10. Dec. 7, 1965, disorderly the corridor outside.

Father Groppi has an arrest cord dating to 1985. Court record dating to 1965. Co

Resisted Policemen v Decides Groppi

ng an open housing march here last summer.

Ryan Duffy, fr., who sat as a circuit judge in hearing the case, set Morday for hearing motions and possible sentenc-

The jury of nine men and three women deliberated 2 thous and 35 mirutes before returning the verdict at 4:45 p.m. Father Groppi frowned when it was read.

Priest "Isn't Surprised"

Asked by a reporter to comment. Fat finer Groppi said:
"Mississippi, It's no surprise to me. This happens every time we come in here. You got II white jurors and I wassub black."

Rerred to the one Negro juror, William Palmer, 722 W. Brown st. Pelmer heard Fether Groppi's comment on a televi-Father Groppi obviously re-The Milwan sion news report Friday n. and

CO UTTE

A circuit court jury found that jury or any other jury. I Father James E. Groppi guilty was respected on that jury Friday of resisting arrest durand made my decision in acting an open housing march cord with my intellect, not my here last summer.

Police testified during 2 one Palmer said he felt "sympaand a half day trial that the thy for the man" but that Facatholic priest kicked and there of Croppi had convicted cursed them when they took had admitted on the witness him into custody. He denied stand that he had gone limp resisting or cursing.

Father Groppi faces a pos when police tried to arrest sible maximum penalty of a him.

Sible maximum penalty of a him.

Sitting down is a passive year in county jail, a \$500 fine resistance," Palmer said.

a \$500 fine "Stting down is a passive a \$500 fine resistance," Palmer said.

Judge F. After the verdict was given, and as a Thomas Jacobson, Father

Turn to Groppi, page S, col. 6.

Notice of Appeal

STATE OF WISCONSIN

CIRCUIT COURT-MILWAUKEE COUNTY

STATE OF WISCONSIN.

Plaintiff.

V.

FR. JAMES E. GROPPI,

Defendant.

To:

Francis X. McCormack, Esq. Clerk of Court Milwaukee County Milwaukee, Wisconsin

Hugh R. O'Connell, Esq. District Attorney Milwaukee County Milwaukee, Wisconsin

PLEASE TAKE NOTICE that the defendant in the aboveentitled action, by his attorney, Thomas M. Jacobson, hereby appeals to the Supreme Court of the State of Wisconsin from the judgment of conviction and the sentence imposed upon him in the above-entitled action by the Honorable F. Ryan Duffy, Jr., on the twelfth day of February, 1968.

Dated at Milwaukee, Wisconsin this 12th day of February, 1968.

Fr. James E. Groppi, Defendant

By:

THOMAS M. JACOBSON
Thomas M. Jacobson
Counsel for Defendant

[1]

CHARGE: RESISTING AN OFFICER

TRIAL in the above entitled action, held on February 7th, 8th and 9th, 1968 in Circuit Court, before the Honorable F. Ryan Duffy, Jr., Acting Circuit Judge, presiding.

APPEARANCES:

John Lauerman—Assistant District Attorney, appearing for the State of Wisconsin.

Thomas M. Jacobson—Attorney for Defendant. Defendant in Court.

James J. Thurber-Acting Official Reporter.

[2] Proceedings
February 7th, 1968.

JOHN F. KITZKE—appearing specially for the Honorable Henry Maier—Mayor of the City of Milwaukee.

Mr. Kitzke: I have the original order to show cause, which I would like to file, showing service.

The Court: Hello gentlemen, before us we have the State of Wisconsin, Plaintiff, versus James Edmund Groppi, Defendant, case number—Circuit Case Number G-4718, which is an order to show cause, and an affidavit attached thereto, returnable by 4 o'clock this afternoon. On an order to show cause, why the subpoena, issued heretofore on behalf of Henry Maier, Mayor of the City of Milwaukee, for this Court, above entitled, on February 8th, 1968 at 3 o'clock, could not be quashed.

Mr. Kitzke: That was the time on the subpoena, Your Honor, yes sir.

The Court: So you're the moving party?

Mr. Kitzke: I am John F. Kitzke, representing the City of Milwaukee.

The Court: Do you have a statement to make, at this time?

Mr. Kitzke: I am representing the Mayor, Your Honor. We are at a complete loss, what if anything, could require the presence of the Mayor before the Court. Since [3] there is nothing he can add, or assist the Court in, in the trial of this case tomorrow. The charge as we understand it, from looking at the record, is a violation of Section 946.41 of the Wisconsin Statutes, entitled, Resisting or Obstructing an Officer, we believe, on the information and belief, that the incident involved, which took place on the 31st day of August, 1967, at approximately 8:40 p.m., at or about North 9th and West North Avenue, in the City and County of Milwaukee, State of Wisconsin, the affidavit of the Mayor clearly indicates that he was no where near the incident, or scene of this incident, he did not see it, and he knows of no facts of his knowledge, which in any way would add to, or subtract from the case to come before the Court tomorrow morning. The only thing we can presume here, is that someone is going to attempt to harass the Mayor, and inquire into his executive authority in issuing a curfew order on August the 30th, 1967. Now the law is clear, that whatever law is violated, gives no party, no party the right to resist, and the trial before this Court tomorrow, will not be on any constitutionality, or validity of the curfew, or proclamation, but will be solely whether the defendant did, or did not resist. Now it is clear in the law, so clear that it is difficult to find citations, because it is so universally accepted that a person arrested cannot question the previous law. [4] In the question of resisting, we cite, 21 Am Jur 2d 95,

in which it stated, that a legislative act is presumed proper and constitutional until such time as a Court determines otherwise, this cannot be determined in the resisting case. In Warren v. United States, 177 F2d 596, the Court clearly ruled that one may not disobey the law, even if in good faith they may believe it to be unconstitutional. In State v. Carroll, 38 Conn. 449, there is a clear don of the problem we have before the Court. The A Report, 409, at page 428, said, every law of the legislature nowever repugnant to the constitution, has not only the appearance and semblance of authority, but the force of law, it cannot be questioned at the bar of private-of private judgment, and if thought unconstitutional cannot be resisted, but it must be received and obeyed as to all intents and purposes until the law is questioned and set aside by the Courts. This principle is essential to the very existence of order and society, and let us just visualize Your Honor, the complete ridiculousness, if anyone could violate the law, because in their own mind, because they felt it wasn't constitutional, say a man goes through a stop sign, and says, I am sorry, you cannot arrest me, and I am going to resist, if because I don't think that law is constitutional, now obviously this is not the law, obviously if you want to question the constitutionality of a law, you do it by [5] proper judicial process. and not by resisting, and this Court will not have to determine, nor can they be asked to determine the constitutionality of the curfew order, or the proclamation, this is being questioned and tried in other courts. I point out to the Court this is so well recognized as pointed out by the Connecticut case, it almost needs no citation. I have previously pointed out by the affidavit of the Mayor, he was not at 9th and North Avenue, he saw nothing, or heard nothing, which would add to the testimony before this Court and

what happened. Now when we turn to the power of subpoena, certainly this power is within the Court, within the power of the Court, and the Court is able to quash that subpoena, where the Judge has not issued it, on a basis shown. that it was necessary, but rather under our process, an attorney has, an attorney has issued the subpoena. We must never forget the separation of power between the executive branch and the Court. It is not the Court's prerogative to inquire into the thinking or judgment, the background in an action of an executive, and we believe that the only objective in this subpoena Your Honor, is to attempt to harass the Mayor, and to take him from his very important duties to the citizens of this community, and I defy the defendants to show one fact, that the Mayor observed, or could be questioned on anything other than a witch hunt. to try to attack his thinking and [6] judgment in issuing the curfew, and this I don't believe even the Court has a right to inquire into. In 85 Pa. State, 433, this special question was considered as to a governor, and not wanting to quote a very long case Your Honor, I would just like to take one very important statement of that Court, the Court should have been formed before it undertook to interfere with the personal liberty of the citizen, by his summary process of his attachment, or subpoena, the matter was sustained, now it is apparent that the subpoena was issued for no tangible cause to the party, and no properly legal purpose, hence, no one was bound to obey it. Now the Mayor, of course, is not going to disobey the subpoena of this Court, but he certainly has the right to come to this Court and ask the Court to quash this subpoena, and he should not be forced to sit here for no purpose at all. Further in that case at page 672, the Court said, we better at the outstart recognize the status of the executive branch, which is a coordinate

branch of the government, with the power to exercise what should, or should not be done within its own department, and with it in the exercise of these constitutional powers, the Court said, they have no more right to interfere than the executive branch, under like conditions, to interfere with the Courts, and this Court, of course, will not interfere with the executive's branch, with the Mayor, unless good [7] cause is shown, that the subpoena should exist, and that the Mayor be called upon.

The Court: So you're moving that the subpoena be

quashed?

Mr. Kitzke: Yes, sir, I am.

The Court: On this basis, on the order to show cause and affidavit?

Mr. Kitzke: Yes, sir.

Mr. Jacobson: Your Honor, Counsel would object to Plaintiff's Counsel, or in this matter, the Mayor's Counsel, determining or describing the action, on the part of Defendant's Counsel in subpoenaing witnesses in criminal trials, for no other purpose than harassment, I believe it improper argument. At this juncture, it is whether or not the issuance of a subpoena and a calling of a material witness, as far as the defendant is concerned, and is concerned presently, without the Court having benefit of the presence of the person so subpoenaed, and the benefit of the elicitation of certain facts on that witness, on part of the Counsel who subpoenaed that witness, any type of attempt to categorize the subpoening of a witness in a criminal trial. and term it to be as harassment, I think is improper argument, and I think it is very dangerous Your Honor in that, in a criminal trial, we are talking about a defendant's constitutional rights, and the opportunity [8] to have due process, and full opportunity to develop defense on his

behalf, and to allow the inferences of subpoening, to be for no other purposes than of harassment, I think it is very dangerous in a free society. I don't think we want that kind of situation to develop in this community, where we are going to protect certain people becoming material. material witnesses in cases, on speculation that they are being called for witnesses for no other purposes than for harassment. On the specific argument that is proper, and that is the actual law that is applicable in this particular case, and the reason for the subpoenaing of the Mayor as a witness in this matter, as the Court knows we have a motion that is pending which will be argued tomorrow, prior to impaneling the jury, which goes to the validity of the Mayor's proclamation, both on its face and as applied, that proclamation upon my information and belief is the basis for the arrest of the defendant, and then it was in the course of effectuating that arrest, and carrying out that arrest the alleged resisting took place. Now Counsel for the Mayor is-has not cited any Wisconsin authority, on the position that in fact, a person cannot resist an invalid arrest, and the citations that Counsel had prepared and presented to the Court, if the Court deems that that is an issue, and that it would be upon the correctness of the proclamation in fact being an issue in this case, whether [9] or not the Mayor was a material witness, if the Court decides that it wants argument on whether that is an issue or not, I would ask we have time to brief that question, because it becomes fundamental to the case that will be heard by the jury tomorrow. As far as Counsel understands of the law at the present time, that in fact, an invalid arrest would nullify any resisting, if it was proved if there was resisting, and I would ask the Courts leave to brief that question, prior to the Court ruling whether or

not the Mayor ought to be a witness in this case or not. It's Counsel's understanding of the law that in fact, if the proclamation is invalid, then the arrest is no good, and then if it should be proved it was resisting, which of course is denied by the defendant, if there should be resisting, even so resisting an invalid arrest is not a crime, and we have some authority, at this time we would like more time to research.

The Court: You already have a motion on the constitutionality on file with this Court, which I will rule on, 9 o'clock, prior to the trial, is that correct?

Mr. Jacobson: That is correct, Your Honor. Now, as to, if the understanding of Counsel's correctness to the law. on the matter of whether or not resisting an invalid arrest then is not a crime, the Mayor's testimony becomes crucial, and he does become a material witness in [10] this proceeding, and in that only the Mayor can testify as to the conditions which led the Mayor to invoke his emergency powers in the form of the proclamation, which the defendant is alleged to have violated, which forms the basis of the arrest, and subsequent resisting, only the Mayor would have the facts available and testify those into the record, those facts only the Mayor would know, what condition existed in the City of Milwaukee, which he believed constituted an emergency, which enabled him to invoke the emergency powers of the Mayor, in the form of the proclamation, and of course, it is for that reason that Defense Counsel subpoenaed the Mayor. Again Counsel cannot object too strenuously to the Counsel of the Mayor, in describing that kind of strategy, that subpoenaing the Mayor was for no other purpose, except for the purposes of harassment. I believe that degenerates the role of Counsel, and the proper type of argument that should be put forward in the case that has the ramifications of a

case of this nature. As a result of this Mayor's proclamation, hundreds of our citizens in this community was charged with various offenses. It seems to me it is fair game if the Mayor issues a proclamation that he ought to stand behind that proclamation, and be subject to subpoena to testify the basis for that proclamation.

The Court: All right, any further in rebuttal?

[11] Mr. Kitzke: Counsel in support cites no citations, not only none from Wisconsin, but none at all. What the Mayor's thinking was, in making the proclamation is no wise material in any way, to a resisting arrest charge. Number one, once a law is on the books, it is presumed valid and constitutional, and being so presumed, even if subsequently said, in judicial procedure it was not constitutional, the citizen must obey it at that time, because it is on the books. Now, Counsel secondly stated, that he is going to try before this Court the non-constitutionality of the proclamation, which is not a part of the resisting charge, while at the same time, he has an action pending in the Federal Court, and he claims that by virtue of the action in the Federal Court, no charges should be brought in the State Court, on the question of the proclamation, with the Federal Court rules. So he is saying that the City should not move on the proclamation, on one side, because there is a Federal Court Action, but he has a perfect right to act, to move on the other side, in a totally unrelated case.

Mr. Jacobson: I informed Mr. John Lauerman, who is now sitting in this Court, I called before the issuance of the subpoena in question, I informed Mr. Lauerman it was Counsel's intent, if the District Attorney's office was going to continue in prosecution of this case, prior [12] to the determination in Federal Court, of the validity of the Mayor's proclamation, which was invoked, that we would have no

alternative but to subpoen the Mayor, and to try the validity of the proclamation in this Court, but I informed Mr. Lauerman, he ought to tell Hugh O'Connell, the District Attorney for Milwaukee County, and to give us an opportunity to come in Court for the very reasons that Mr. Kitzke has set forth, we, having asked that all prosecutions, based on the proclamation be delayed until the Federal Court has in fact ruled on the validity, the constitutionality, the answer that came back from Mr. Lauerman—

Mr. Kitzke: Let's talk about the facts, the District Attorney does not represent the Mayor of the City of Milwaukee, we represent the Mayor of the City of Milwaukee, he doesn't have to be subpoenaed because you think that maybe sometime if the Court rules that you can go behind the resisting, to the initial law, you might some day, five days from now, you can delve into his thinking, as to his exclusive function, in issuing that order, and not properly reviewable, and as to his thinking, the law is basic, the resisting arrest has nothing to do with the law under which the man was arrested, you must obey an existing law, if you don't think it constitutional, you go to Court and change it, you don't punch the officer [13] in the nose.

The Court: I will reserve a decision to quash the subpoena, until after my ruling at 9 o'clock tomorrow.

Mr. Kitzke: The Federal Court asked Counsel on both sides, Mr. Jacobson and the City, to take no action in any other Court, relative to the constitutionality of this proclamation, until the Federal Court ruled. We wouldn't want to be in a position where we are breaching our position with the Federal Court, and we insist that it is not a question of ruling of constitutionality, but a question whether that can ever be questioned.

Mr. Jacobson: That is the position of the Defense Counsel, it is precisely as the City Attorney's position, we understand the Federal Court asked that no action be taken on the proclamation until they have had an opportunity to rule on it. We have informed the District Attorney's office of that fact, we would like this put off until after the determination in Federal Court, and that is still pending.

The Court: There are some motions on file. I will rule on them, as well as this order to show cause, and affidavit to quash.

Mr. Kitzke: 9 o'clock, Your Honor?

The Court: 9 o'clock sharp.

[14] PROCEEDINGS

February 8th, 1968.

APPEARANCES:

(Same as above noted).

(IN CAMERA)

The Court: All the parties here, that need to be here?

Mr. Lauerman: Yes, Your Honor.

The Court: In the matter of the State of Wisconsin, Plaintiff v. James Edmund Groppi, Defendant, Circuit Case Number G-4718, wherein this Court has been appointed to hear the matter, as a Circuit Court Judge, there were three motions scheduled for ruling this morning. Firstly—I might add, these motions, and decisions of motions, and rulings of motions, are heard in chambers, because the jury panel is so extensive out in the courtroom, it is impractical for them to leave into the corridors, and this should be heard outside of their presence. Firstly,

there is a motion filed by the Defendant's Defense Counsel, Mr. Jacobson, to dismiss on behalf of the Defendant, James Edmund Groppi, on the grounds that the Mayor's proclamation is unconstitutional. That is the first motion to be

ruled on this morning.

Mr. Jacobson: If it please the Court, at this time I am withdrawing the motion, the question of the validity and constitutionality of the proclamation is now [15] pending in Federal Court, and that is the proper form wherein that determination should be made. I would like to say this, Your Honor, at this time, there is a matter of a subpoena on the Mayor of the City of Milwaukee, the determination by this Court as to whether or not that subpoena is going to be honored, or whether it should be quashed. The purpose of the bringing of the subpoena on the Mayor was to have the Mayor be called as a witness on behalf of the defendant, and to elicit from the Mayor testimony regarding the issuance of the proclamation, which formed the basis for the defendant's arrest in this matter, on August 31, 1967, and then on the basis of those facts, the defense would have brought a motion that the proclamation, the emergency powers as applied to this defendant was unconstitutional. Now, yesterday, when Counsel argued the matter of the priority of the defense of this matter, resisting an unlawful arrest, did not cite any cases. Just to make the record complete, a case, Nathaniel Wright v. State of Georgia, a decision in 1963, citations, 373 US 284, 10 Lawver's Edition, 2d Page 349, 83 Supreme Court, 1240, quote, and I have the Lawver's Edition case Your Honor, that would be on 10 Lawyer's Edition 355, where I am now quoting the language of the United States Supreme Court-

The Court: Well, let's-

[16] Mr. Jacobson: The gist of the decision, I won't read the language, it is just to the fact, the fact, resisting an unlawful arrest is not a crime, and I have another case, City of Columbus v. Julia Holmes, a decision from the Court of Appeals from the State of Ohio, 169 Ohio, 25, 152 n.e. Section 301. I did have an opportunity to take a look at the cases that were cited by the City Attorney, their cases were from the late 1800's. The case that is most recent is Wright v. Georgia Case, Supreme Court, in a case similar to this one, some Civil Rights demonstrations, found that resisting an unlawful arrest, was not a crime. So Your Honor, in summary, at this time we are not going to proceed with the argument on the constitutionality of the proclamation, in that it is in Federal Court, and should be settled there. However, we would ask the Court to rule on the subpoena on the Mayor, for the reasons we indicated, the facts, we have reason to believe this would put in issue the constitutionality of the proclamation, which was applied, and further, then if that was ruled unconstitutional by the Court, the issue of whether or not resisting an unlawful arrest, then would be a matter, would be decided on, based on the authority that we have presented to this Court. We believe the cases hold, that one cannot be found guilty on an unlawful arrest.

Mr. Kitzke: I think Counsel is referring to [17] cases in which, the arrest by the officer, may have been declared unlawful because the officer did not observe, or have sufficient facts on which to make an arrest. This is distinctly different than a claim of an unlawful arrest based on the unconstitutionality of the proclamation, or law. As a matter of law, it is presumed constitutional until such time a Court of proper jurisdiction rules it unconstitutional, and a officer has a right and must rely on the face of the law in

any statute book, ordinance book, or any proclamation, because it is his duty, and it is incumbent upon him to enforce an arrest under every law of the ordinance of the City, or proclamation of the Mayor, where it is understood neither the officer, or the person being arrested has the right to make their own judgments at that point as to the constitutionality of that law. Therefore, why he Mayor put the proclamation into effect, or what facts he had in his mind, or observations, or information, has nothing to do with the resisting case. The only thing that you have the right to show, is the facts that occurred on the street, why the officer made the arrest, and whether there was a resisting, what happened in the Mayor's mind prior to the issuance of the proclamation, is not relevant. Now they are not even questioning its constitutionality, that motion is not going to be even heard.

The Court: Here is my rulings as follows. Firstly, [18] the motion to dismiss on the part of the Defense Counsel Mr. Jacobson, on behalf of the Defendant James Edmund Groppi, on the grounds that the Mayor's proclamation is unconstitutional has been withdrawn. The Court therefore will need to have no ruling on that. Secondly, there being no constitutional questions of law in that regard, the subpoena issued on behalf of the defendant, ordering the appearance of the Honorable Henry Maier, Mayor of the City of Milwaukee before this Court on February 8th, 1968 at 3 o'clock, is hereby quashed. Thirdly, the motion to dismiss on the grounds of Section 956.03 (3) that it is unconstitutional, is before the Court for ruling this morning, as a Circuit Court Judge, and that is denied. Plead the case on its merits.

Mr. Jacobson: On that last motion Your Honor, to make this sure for the record, they had a-

The Court: The prior-

Mr. Jacobson: The basis for this particular motion, the Court denied a change of venue, because of community prejudice, and the rationale of the Court was that the statute only provided a change of venue to community felonies, and not in misdemeanors.

The Court: That's right.

Mr. Jacobson: Therefore at this time the Defense Counsel on behalf of the Defendant, has challenged the [19] constitutionality of the change of venue, to community prejudice statute, on the basis that it is a denial of equal protection to criminals, or alleged criminals, on a basis of a serious line of demarcation, of one year, that is what separates a misdemeanor from a felony. However we have an infraction of fundamental rights at issue, and that, that statute has really no foundation, so we are attacking it on that basis, of equal protection.

The Court: My motion to dismiss is on the grounds that it is a matter for the legislature, and not the Courts, so the motion to dismiss on the change of venue, on the grounds that section is unconstitutional, because it provides for a change of venue, is denied. Now, that we have all these motions disposed of, we will proceed on this case, on its merits, and we will proceed to select a jury.

(In Open Court.)

The Court: Do both sides want the complaint read in its entirety, or just the body?

Mr. Jacobson: Your Honor, I think the entire complaint, please.

The Court: Ladies and Gentlemen of the Jury, this is a criminal complaint, State of Wisconsin, Milwaukee County, in the County Court Misdemeanor Branch. State of Wis-

consin, Plaintiff, against James Edmund Groppi, the [20] Defendant. Complaint for resisting an officer, in the State of Wisconsin, through the Sheriff, Constable, or any police officer of the City of Milwaukee. On the State Case Number 2-63208, "whereas Wilfred Buchanan, being first duly sworn on oath, states to the Honorable John J. Kinney, as Magistrate, that James Edmund Groppi, the above named defendant, on the 31st day of August, 1967, in the County of Milwaukee, Wisconsin, did unlawfully, knowingly, resist Wilfred Buchanan, a duly appointed and qualified, and acting police officer of the City of Milwaukee, in said County, while the said Wilfred Buchanan was then and there engaged in doing an act in his official capacity, and with lawful authority, to-wit: said Wilfred Buchanan personally observed said Defendant resist Buchanan, at 900 West North Avenue, in the City of Milwaukee, in said County, to-wit: while said defendant was being carried to a police wagon, after being placed under arrest, said defendant began kicking his legs, striking said officer, Wilfred Buchanan in the body with his foot, that said defendant then states to Wilfred Buchanan, "you fuckin' son-of-a-bitch, I want your number". "Contrary to Section 946.41 of the Statutes, and against peace and dignity of the State of Wisconsin, and prays that the said James Edmund Groppi, may be arrested and dealt with, according to law, signed Wilfred Buchanan, subscribed and sworn to before me this [21] 1st day of September, A.D., 1967, Magistrate John J. Kinney, I hereby find and determine, that there is probable cause for the issuance of a warrant in the above matter, Magistrate John J. Kinney.

(Jury impaneled.)

The Court: All the other jurors that do not have to sit on this particular case, are to report to the fifth floor,

Circuit Clerk's Office, on the fifth floor. The members of the jury panel and the lady who is serving as the alternate, will report back here at 2 o'clock, we will start promptly at 2 o'clock.

(Court recessed until 2 p.m. February 8th, 1967.) (Court reconvened at 2 p.m. February 8th, 1967.)

(Jury Present.)

The Court: The jury has been impaneled. Now we will ask if the Assistant District Attorney wishes to make an opening statement.

Mr. Lauerman: Yes, Your Honor. A part of making my opening statement is to inform the Court and members of the jury, that Mr. Joseph Lex, Assistant District Attorney, with the District Attorney's Office, will be seated at Counsel table during the course of this trial. May it please the Court, Ladies and Gentlemen of the Jury, you heard the complaint read to you this morning, when you [22] were still members of the panel, as such, I would just like to have a very few minutes to tell you, what the State intends, through its witnesses to show to you, during the course of this trial. On August 30th, 1967, the proclamation was issued by the Mayor of Milwaukee, which regulated the times during which demonstrations could be made in the City of Milwaukee. On August 31st, 1967, Father Groppi and several other members of the Youth Council, and other people began a march in the evening hours. The march was taking place at a time that the Mayor had determined marches should not be taking place. Inspector Ullius, of the Milwaukee Police Department, by use of a bull-horn, which is a magnifying device, to magnify the voice, read a copy, read from a copy of the Mayor's Proclamation, telling the marchers, that their marching was

in violation of this proclamation, he did this on two separate occasions within a span of several minutes. On the third occasion, around 10th and North Avenue, in the City of Milwaukee, he again warned them, that what they were doing, was in violation of the law. The marching continued, so at this point Inspector Ullius told Sgt. Frank Miller of the Milwaukee Police Department, to make arrests. Father Groppi was arrested by Police Officer Armando Brazzoni, who was a member of Sgt. Miller's squad. At the time he was arrested, there [23] was a scuffle, after which Father Groppi went limp onto the street, so Sgt. Miller and two other police officers, Armando Brazzoni and Wilfred Buchanan picked up Father Groppi, in order to carry him to the patrol wagon, the paddy wagon, which was about 100 feet from the point where he had gone limp, Officer Armando Brazzoni picked Father Groppi up around the back area, his hands underneath his shoulders, Sgt. Miller picked him up by one leg, and Officer Buchanan picked him up by the other leg, they then proceeded to carry him to the paddy wagon. As I said before this was a distance of approximately 100 feet, when they got to the paddy wagon, suddenly Father Groppi, as the officers were releasing him, in order to have him put in the paddy wagon, Father Groppi kicked Officer Wilfred Buchanan in the chest, some words followed, after which the defendant, Father Groppi was successfully placed in the wagon. The State will prove to you, or show to you that the acts of Father Groppi in this case, constituted a resistance, as directed toward Officer Wilfred Buchanan, thank you.

The Court: Mr. Jacobson, representing the defendant, do you wish to make an opening statement.

Mr. Jacobson: The defense will reserve their opening statement until later, Your Honor.

The Court: All right.

[24] Mr. Lauerman: Your Honor, the State would wish to have State's Exhibit marked for identification, and entered into evidence as State's Exhibit 1, containing a certified copy of the proclamation.

(State Exhibit Number 1, marked for identification.)

The Court: Certified copy.

Mr. Lauerman: Of the proclamation, dated August 30th, 1967.

Mr. Jacobson: Objection, Your Honor.

Mr. Lauerman: What grounds?

Mr. Jacobson: Well, there has been no foundation laid at this time, for the introduction of the proclamation, and secondly, the proclamation is immaterial to the charge with which the defendant is before the Court and jury, and that's all.

Mr. Lauerman: The State would wish to be heard out of the presence of the jury, Your Honor.

The Court: Right, members of the jury, will be excused for a few minutes.

(Jury excused.)

Mr. Lauerman: You want to argue your objection?

Mr. Jacobson: Yes.

The Court: State's Exhibit marked for identification, is a certified copy of the Mayor's proclamation of August 30th, 1967, there will be an objection thereto, on the part of [25] Mr. Jacobson, what do you wish to state to your objection?

Mr. Jacobson: At this point we don't believe the State has established any foundation for the introduction of the proclamation into evidence, nor established its materiality. As to the second point, the defense this morning withdrew any constitutional objections to the proclamation in the

proceedings, in the resisting arrest charge, for the reason, that the state of the proceeding, even at this time, as far as the record is concerned for the charge of resisting arrest. the proclamation on its face, attacking that proclamation's constitutionality, does not become material, to whether or not Father Groppi in fact resisted arrest. However, defense counsel, anticipating that the proclamation would be offered into evidence by the State, had under subpoena the Mayor of the City of Milwaukee, for the purpose of eliciting certain testimony from the Mayor, as to what emergency conditions the Mayor felt existed in the City of Milwaukee, at the time of the issuance of the proclamation. In order to lay a proper foundation in the record, for a charge as a matter of law, to the validity of the proclamation and the use of the Mayor's emergency powers as applied to the facts of the defendant in the incident before the Court and jury. Now, the Court has quashed the subpoena, indicating it was not material, that any [26] testimony that would be elicited from the Mayor to these proceedings, that is, to the resisting arrest proceeding. The fact is that defense counsel has been precluded from putting facts into the record, through the Mayor, to show that in fact, emergency conditions did not exist in the City of Milwaukee. on the 30th day of August, 1967, to warrant the issuance of the proclamation, which is now being offered into evidence. As a matter of fact, was a direct infraction of citizens' own constitutional rights to freely demonstrate under the protection of the United States constitution. Having been precluded from doing that, we would object at this time to the proclamation being offered into evidence, on the basis that it does not become material, the proclamation, what it says, to the offense of resisting arrest.

Mr. Lauerman: Regarding Counsel's first objection, that—being that there was no foundation laid, I would

refer the Court to Section 889.18 of the statutes, entitled Official Records as Evidence, sub. 1, "every official record, report, or certificate made by any public officer pursuant to law, is evidence of the facts, which are therein stated, and which are required or permitted to be, by such officer, recorded, reported, or certified, except that the record by the County Clerk of License or certificate, under 147.23 or 153.05, shall not be evidence on behalf of the [27] licensee, or certificate holder-without production of the license or certificate or competent evidence from the board or body that issued the same". Sub. 2, Copies as Evidence. "A certified copy of any written or printed matter preserved pursuant to law in any public office, or with any public officer in this State, or of the United States is admissible in evidence, whenever and wherever, the original is admissible, and with like effect." Regarding the present State's Exhibit 1, for identification, this is a certified copy of a public record, and as such is admissible under this section

The Court: May I see that.

Mr. Jacobson: May I respond to this, what I mean by not proper foundation, I am well aware of the certified record of the Wisconsin Statutes, and it is true, that in fact, this is properly admitted into evidence, but there has been no foundation through any witnesses to indicate the proclamation is an issue in this case, there hasn't been any testimony offered in the record, that in fact the proclamation was issued, or that any officers were acting on what was issued, or anything of that nature. The State is leading off with an exhibit which we have nothing in the record to indicate why they are material to these proceedings, and because the State has not laid the proper foundation to offer this exhibit into evidence.

[28] Mr. Lauerman: Let me proceed briefly, to Counsel's second point, as to materiality. Under the charge that the defendant, in the present case is charged with, it behooves the State to prove that the officer was acting both in his official capacity and with lawful authority. For that reason the proclamation becomes very material, because that is the reason for the arrest, and the subsequent resisting. would be as to that arrest. So it does behoove the State to show the reason for the officers arresting Father Groppi. so that the jury will not be confused as to why the arrest was permitted in this case. I think it is as material as. for instance a battery charge, for which a man was arrested, which the Court and jury could take judicial notice of, or any other reason, disorderly conduct, for any other reason that a person may be subsequently arrested. That the officer was acting under a lawful authority, and I think for that reason, this is very material and if the Court would care to rule on that aspect, on that specific issue, then the State would have no objection to not introducing State's Exhibit 1 for identification until the proper point and time, when the first witness would get to that point, whereby, the proclamation would become material in that respect.

The Court: I will reserve a ruling.

Mr. Lauerman: Until that time?

[29] The Court: I will reserve a ruling until such time it is called upon.

Mr. Lauerman: Very good.

(Jury present.)

Inspector Roy Ullius-for Plaintiff-Direct

TESTIMONY FOR PLAINTIFF

INSPECTOR ROY ULLIUS, called as a witness on behalf of the State of Wisconsin, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Lauerman:

- Q. Would you please state your name, sir? A. Roy Ullius.
 - Q. What is your occupation? A. I am a police officer.
 - Q. How long have you been a police officer? A. 25 years.
- Q. Are you a police officer for the City of Milwaukee Police Department? A. Yes, sir.
 - Q. And what rank do you hold? A. Deputy Inspector.
- Q. How long have you been a Deputy Inspector? A. A little over two years.
- [30] Q. Inspector Ullius were you an Inspector for the Milwaukee Police Department on August 31st, 1967? A. I was.
- Q. What were your hours of work on that date? A. My tour of duty started at 2 p.m., and ended at 2 a.m. the following morning.
- Q. Do you remember where you were at approximately 7 p.m. on that date? A. I do.
- Q. Where were you? A. I was at St. Boniface Church, in the City of Milwaukee, at North 11th and West Meinecke Streets.
- Q. What happened when you were at that place, on that date? A. At approximately 7 p.m., on Thursday, August 31st, 1967, a group of three to four hundred persons commenced a march, three to four abreast, south on North 11th Street, toward West North Avenue.

Inspector Roy Ullius-for Plaintiff-Direct

Q. What did you do as this march began? A. I drove the squad I was operating to the middle of the 2500 block of North 11th Street, at approximately 2539, I stopped my squad and took a portable loud speaker, a public address system from the squad, and placed it on top of the squad, using the roof of the car for a resting place for this portable speaker.

Q. What did you do then? [31] A. I then read a proclamation, a copy of a proclamation that I had received when

I came to work at 2 p.m. on this date.

tion.

Q. Did you read it through this portable loud speaker you had? A. Yes, sir, I did.

Q. I show you what has been marked State's Exhibit 1 for identification, and ask you, if you know what that is? A. It is an exact copy, of the copy of the proclamation that I had in my possession on that date.

Q. What did you do after you first read the proclamation to this crowd of people? A. The group of people continued their march, singing and booing, to a degree that I do not know how many people marching heard me read this proclamation, and then I proceeded to the 2300 block of North 11th Street, and again read the proclama-

Q. Did you read this proclamation in the same manner that you previously had? A. Yes, sir.

Q. What happened then? A. The march continued to West North Avenue, turned east on North Avenue, and at North 10th and West North Avenue, I advised the marchers in the same manner, that the continuation of this march was a violation of the proclamation, and that if they did not stop this march, at this time, arrests would be made.

[32] Q. What did you observe happening then? A. The march continued eastbound on the north side of the street on West North Avenue.

Q. What did you do then? A. I then advised the police officers that were with me, they should take police action, to stop the march.

Q. Do you remember any particular officers? A. Sgt. Frank Miller was immediately beside me, and Officer Brazzoni was with him, several other police officials were present there, at the time.

Q. Are these addresses that you have been testifying to, regarding that of North 11th and West North Avenue, and of the 2500 block of North 11th Street, and the 2300 block of North 11th Street, and that of 10th and North Avenue, are all those addresses in the City and County of Milwaukee, State of Wisconsin? A. They are, sir.

Mr. Lauerman: That's all.

Mr. Jacobson: Your Honor, the defense moves to strike the line of testimony that has been put in the record, as being immaterial to the resisting arrest charge.

The Court: That is the foundation, so I will overrule your objection.

Mr. Jacobson: No questions. The Court: You're excused.

[33] Sgt. Frank Miller, called as a witness on behalf of the State of Wisconsin, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Lauerman:

- Q. Would you state your name please? A. Frank Miller.
- Q. What is your occupation, sir! A. Police Officer.
- Q. Is that for the City of Milwaukee Police Department?
 A. Yes, sir.

Q. What is your rank? A. Police Sergeant.

Q. How long have you been a member of the Milwaukee Police Department? A. 16 years.

Q. How long have you been a Sergeant! A. Eight

years.

Q. So then you were a Sergeant on the Milwaukee Police Department on August 31st, 1967, is that correct? A. Yes, sir.

Q. Do you remember what your hours of duty were on that date? A. This particular duty, was 4 p.m. to 4 a.m.

Q. Do you remember where you were on August 31st, 1967, at approximately 7 p.m.? A. Yes, I do.

[34] Q. Where was that? A. I was in the vicinity of 11th

and West North Avenue.

- Q. Why were you there? A. I was there as a Field Supervisor, with officers under my command, to parallel a march that was started approximately at this time, at which, was marching on West North Avenue.
- Q. Did you subsequently see these marchers? A. Yes sir, I did.
- Q. Do you remember what time? A. It was approximately 7 p.m.
- Q. What did you do when you saw these marchers? A. I instructed the officers under my command to parallel the march, as they marched on North Avenue, on 11th Street, east on West North Avenue, from 11th Street.

Mr. Jacobson: Will you read his answer back?

(Answer read back.)

By Mr. Lauerman:

Q. While you were watching the marchers, can you state, whether or not you had occasion to see Inspector Ullius?

A. Yes, I did.

Q. What if anything, did you observe him do? A. Inspector Ullius was walking on the road, east with the march, on West North Avenue, and he was at the very beginning of the march, I myself was practically at his [35] side, also at the head of the march.

Q. What happened as you were walking? A. Inspector Ullius had read off the Mayor's proclamation to the marchers informing them of the violation of the proclamation, and when we reached 10th Street, Inspector Ullius again read off the proclamation to the marchers.

Mr. Jacobson: I am going to object to the answer, and the question, as being immaterial to the resisting arrest, I'd like to be heard on the objection at this point Your Honor.

Mr. Lauerman: Perhaps we could go in there.

Mr. Jacobson: I'd gladly have the argument in front here, whatever the Court wishes.

The Court: What is your objection, then I will rule on it.

Mr. Jacobson: The objection Your Honor, is that any testimony as to what occurred in response to what Inspector Ullius did in regard to the marchers is immaterial to what the defendant is charged with, the only thing that is material is what the Sergeant did, in respect to the defendant, and on what basis, and what authority.

The Court: On the other hand, the Inspector, I believe, testified this man was a subordinate of his, and acting under his authority, for that reason I think it is material, and I will overrule your objection.

[36] By Mr. Lauerman:

Q. Sgt. Miller, after you had heard Inspector Ullius read the proclamation to these marchers, for the second time, what happened, what did you observe? A. At this time the marchers, were marching, they had their arms locked, marching approximately three to four abreast, they were marching very slowly.

Mr. Jacobson: I am going to object to the question and answer, on the basis of immateriality, as well as it is highly prejudicial that any testimony of this nature, being put in the record, as far as this defendant is concerned, and what he is charged with.

The Court: It might possibly apply, it is a preliminary question, so I will overrule the objection, let the answer stand.

By Mr. Lauerman:

- Q. You then followed these marchers to the ten hundred block of West North Avenue, what happened then, if anything? A. After Inspector Ullius read off the proclamation for the last time, he instructed me to stop the march, and make arrests.
- Q. What did you do? A. I turned my attention to the officers under my command, and I instructed them to stop the march, and make arrests.
- Q. What did you observe then? [37] A. Patrolman Armando Brazzoni, was instructed to arrest Father Groppi.

Mr. Jacobson: Just a minute, that is not responsive.

The Court: Overruled, he said what he observed, I will let that answer stand.

The Witness: I accompanied him, Brazzoni to Father Groppi's side, and Father Groppi was placed under arrest, Officer Richard Dembrowski also joined us there, and we proceeded to walk him to a wagon, which was parked in mid-block between 9th and 10th on West North Avenue, the wagon—

Mr. Jacobson: That is enough officer, make your answers more responsive, in a question and answer form, no narratives.

By Mr. Lauerman:

Q. I will just back up a little bit Sergeant, you said that you and Officer Brazzoni, went to Father Groppi, and placed him under arrest? A. Yes, sir.

Q. Who placed Father Groppi under arrest? A. Patrolman Brazzoni.

Q. Were you with Patrolman Brazzoni when he did so? A. Yes, sir.

Q. Was Father Groppi right there too? [38] A. Yes, sir.

Q. What did Officer Brazzoni placed Father Groppi under arrest for? A. Violation of the Mayor's Proclamation.

Mr. Lauerman: State renews its motion to have State's Exhibit 1 for identification entered into evidence, as State's Exhibit 1.

Mr. Jacobson: Objection, same grounds, not material.

The Court: State's Exhibit 1 marked for identification will be received into evidence as State's Exhibit Number 1, pursuant to my ruling that I would reserve it, until such time it was material.

By Mr. Lauerman:

Q. Sgt. Miller, you testified-

Mr. Jacobson: At this point, I would like to place one additional objection in the record. I think I'd better do it outside the presence of the jury, Your Honor.

The Court: All right, jury will be excused.

(Jury excused.)

Mr. Jacobson: At this point Your Honor, the defense again would renew its objection to the quashing of the subpoena, of the Mayor of the City of Milwaukee, now that the proclamation in fact is in evidence, and has been accepted in evidence. The need for the presence of [39] the Mayor to substantiate that in fact emergency conditions existed in the City of Milwaukee, in fact utilized this, in issuing his proclamation, becomes all the more material to a proper defense of this case, and that the Court quashed the subpoena of the Mayor, and not permitted Counsel to elicit testimony from the Mayor, regarding the invoking of the emergency powers, under Statutes and ordinances of the City of Milwaukee, in the form of the proclamation. At this point the defense would like the record to clearly indicate, again, there is an objection.

The Court: All right, as I said, State's Exhibit Number 1, marked for identification, being a certified copy of the Mayor's proclamation, under the law, can be received into evidence as an official document. Secondly, the motion to dismiss, that was filed on behalf of the defendant, which I ruled on today, on the grounds that the Mayor's proclamation was un-

constitutional, has been withdrawn, so therefore, we have nothing to rule on, the constitutionality, or unconstitutionality of the Mayor's proclamation on August 30th. So therefore on that basis of those two, on the basis of those two reasons, I received that, State's Exhibit 1, State's Exhibit Number 1 into evidence, and that's another reason why the subpoena the requesting of the subpoena was quashed, there is no [40] necessity for it, because the Mayor's proclamation is an official document, and as so, the reasons for the Mayor's proclamation, and the reason behind it, would be immaterial to the issue in this particular case, but your objection is noted for the record, and all your prior objections thereto also.

(Jury present.)

By Mr. Lauerman:

Q. Sgt. Miller, after Father Groppi was placed under arrest, what happened? A. We started walking Father Groppi to the wagon, which was parked mid-block between 9th and 10th Streets on West North Avenue—

Mr. Jacobson: That's enough of who helped him, at this point, so I don't have to interrupt the witness when he is testifying, I think we established we were going to object to any narrative, on the part of this witness, we would like the response in a form of question and answer.

The Court: Question and answer, give a direct answer, what you saw, and don't draw any conclusions, what you saw, what you heard, what the defendant did, if anything.

By Mr. Lauerman:

[41] Q. Who helped you direct Father Groppi toward the wagon? A. Patrolman Brazzoni, and Patrolman Dembowski.

Q. Did something happen on your way to the wagon?

A. Yes.

Q. What was that? A. Several members of the Youth Council, came up to us, and started tugging at Father Groppi, trying to pull him away from us.

Q. What did you do? A. Officer Dembowski was separated from us, and was making an arrest of one of the

Youth Council members.

Mr. Jacobson: Objection, it is not responsive. The Court: The question is what did you do.

By Mr. Lauerman:

Q. What did you do? A. I am sorry. I directed him, Patrolman Dembowski to try to have the Youth Council members stop from interfering.

Q. And then what happened? A. Officer Dembowski did just that, and at this time, Father Groppi was still in our

custody, Patrolman Brazzoni and myself.

Q. Now what if anything, did Father Groppi do at this time? A. At this very time, he went limp.

Q. Could you explain, what you mean by that? A. Yes, he became limp in body, and sat in the street.

[42] Q. So then what did you do? A. I called for another officer, this was Officer Wilfred Buchanan, to assist Patrolman Brazzoni and myself in picking up Father Groppi, and—

Mr. Jacobson: I am going to object Your Honor, to this answer of Sgt. Miller, as being not responsive to the question.

The Court: I think that was responsive to an extent, where I will overrule the objection. Reframe a new question.

By Mr. Lauerman:

Q. So Officer—Officer Buchanan came to help you and Officer Brazzoni? A. Yes, sir.

Q. And what did the three of you do? A. Patrolman Brazzoni picked up Father Groppi by the upper part of his body, by the shoulders, I picked up his right leg, Officer Buchanan picked up his left leg, we then started—

Mr. Jacobson: That's enough. Objection Your Honor, not responsive.

The Court: The question was what the three of you did, I will overrule the objection.

By Mr. Lauerman:

Q. So the three of you picked up Father Groppi, then what did [43] the three of you do? A. We started carrying him towards the wagon.

Q. How far was the wagon from this point? A. Approximately 100, to 125 feet.

Q. And did the three of you carry him all the way to the wagon? A. Yes, we did.

Q. As you neared the wagon, what if anything happened? A. As we came toward the rear of the wagon, the doors were opened, there were—the wagon was almost full from other—

Mr. Jacobson: This is not responsive, Your Honor.

The Court: Just what happened?

The Witness: We attempted to place him in the wagon.

The Court: All right, then what happened?

The Witness: As we were easing him in the wagon, Father Groppi suddenly became violent—

Mr. Jacobson: Just a minute, I am going to object—

The Court: Just what did he do, physically?

Mr. Jacobson: I am asking that word, violent, be stricken from the record, that the witness be admonished, I don't want those kind of descriptions placed in evidence, in front of this jury, this Sergeant knows how to testify.

The Court: If the jury wants to attach any [44] significance to this, if you do, you do, if you don't you don't.

Mr. Jacobson: That word violent, is obviously a prejudicial word, it is immaterial, the officer cannot testify in that manner, and he knows better than to testify in that manner, he can testify to the facts, to what occurred, but the conclusions is for the jury to decide, I don't want this Sergeant using language of this nature, he has testified before.

The Court: Same ruling, if you want to attach any significance fine, if you don't, you don't, just weigh all these things, anything you think is material, but if you don't think it is material, then disregard it. Officer tell us physically what he did, and what did you do.

By Mr. Lauerman:

Q. What did you observe Father Groppi do? A. He kicked out with his left leg at Officer Buchanan, catching him in the chest, and he hollered out, "let go of my leg you fuckinn' son-of-a-bitch—

Mr. Jacobson: I am going to object to the language that Father Groppi was supposed to have used, as being immaterial to the offense of resisting an officer, and the language of course, would be outside the province of that charge.

[45] The Court: I will overrule the objection, just exactly what was heard, what was said, that is all for the jury to weigh one way or the other, so I

will overrule the objection.

By Mr. Lauerman:

Q. After he stated this, what happened? A. At this time, Officer Buchanan was on the ground, Patrolman Brazzoni and myself were able to put Father Groppi in the wagon, and just before the wagon doors were closed, he called me a fuckin' son-of-a-bitch—

Mr. Jacobson: Your Honor, I think that is outside of the scope of this charge, and certainly it isn't material, that is set forth in what the Court read to the jury earlier, we object to that testimony, and ask that it be stricken.

The Court: I will overrule the objection, the answer will be sustained as responsive.

By Mr. Lauerman:

Q. After Father Groppi was placed in the wagon, what did you do? A. I ordered the doors closed, and ordered the wagon to convey the people to the station.

Q. Did the wagen then leave? A. Yes.

Q. Did you stay on the scene? A. I stayed on the scene, on North Avenue.

Mr. Lauerman: That's all.

[46] By Mr. Lauerman:

Q. These address that you have been referring to, and the address where Father Groppi was placed in the patrol wagon, are those in the City and County of Milwaukee, State of Wisconsin? A. Yes, sir.

Mr. Lauerman: That's all.

Cross Examination by Mr. Jacobson:

Q. Sgt. Miller, were there quite a few people around Father Groppi at the time you were trying to place him in the patrol wagon? A. There were people in the wagon, a lot of people in the wagon.

Q. What about outside of the wagon? A. There were officers on the street.

Q. Were there newsmen on the street? A. I believe there were.

Q. Photographers? A. I can't answer that truthfully.

Q. Were there other persons that had taken part in the march in the area? A. There might have been.

Q. Well, were there, or weren't there? A. If you were referring to newsmen, there were newsmen.

[47] Q. I asked if there were other marchers in the area, at the time you made the arrest of Father Groppi? A. Oh, yes.

Q. And when Father Groppi said, at the time that he was supposed to have kicked Officer Buchanan in the chest with his left leg, you fuckin' son-of-a-bitch, I want your number, does that—were those words uttered with some degree of force? A. Yes, they were.

Q. Pretty loud, right? A. Loud enough for me to hear it.

Q. Well, you were right there weren't you? A. Yes.

Q. So what I am talking about is loudness, did he shout that out? A. I can't say whether it was shouted out.

Q. The situation that you described, would it be fair to say that Father Groppi was quite excited at the time he was being placed in the wagon?

Mr. Lauerman: I would object, that it would call an opinion and conclusion on the part of the witness.

The Court: Can you answer that?

The Witness: He was very, very, calm.

The Court: Just answer the question, was he [48] excited?

The Witness: At this time, minute, yes.

By Mr. Jacobson:

Q. So he didn't whisper that? A. No, he didn't.

Q. Was he talking in a normal conversational voice, do you recall that? A. No, it was above normal.

Q. So there was some amplification at this particular place, he uttered that with some amplification, is that right? A. Others could hear that besides myself, yes.

Q. Could have heard it? A. Sure.

Q. And you don't really know if there were others in the vicinity, besides yourself that saw this arrest take place, do you? A. No.

Q. Now, you say that Officer Buchanan, had Father Groppi's left leg, is that right? A. Yes, he did.

Q. And you say, you had his right leg? A. Right, right leg.

Q. And Officer Brazzoni was holding the upper part of his body, under his arms? A. Yes.

[49] Q. You say as you attempted to place Father Groppi in the wagon, he struck out with his left leg, and caught Officer Buchanan in the chest? A. That's right.

Q. Do you know whether or not Officer Buchanan was gouging Father Groppi's ankle, with his left thumb? A. I do not know that.

Q. You don't know what might have caused Father Groppi to strike out with his left leg, do you? A. No, I don't.

Q. All you know, is that it went out? A. That's right.

Q. Now, you were the arresting officer for the resisting charge, is that correct? A. No.

Q. Brazzoni is the arresting officer? A. Brazzoni made the initial arrest of the violation of the Mayor's proclamation.

Q. I am talking about the resisting? A. It was Wilfred Buchanan, and Officer Brazzoni.

Q. You are not a complainant in this case, are you? A. No.

Q. Were your officers all equipped that evening in question, with riot sticks? A. Yes, they were.

[50] Q. Did you have rifles that night. A. We might have had them with us, I don't—do not recall on the scene there, we might have had them with us, I don't recall.

Q. Did you have your gas masks that night? A. Are you referring with us at the march, no.

Q. Did you have riot helmets? A. Yes.

Q. Did you have tear gas with you? A. No.

Q. When you broke up the march, did you administer your night stick on any of the marchers?

Mr. Lauerman: I object, what you're asking is immaterial.

The Court: I will overrule, you may answer that. The Witness: You were asking whether I had a night stick, no.

Richard Dembowski-for Plaintiff-Direct

By Mr. Jacobson:

Q. Some other—some of the other officers did? A. Yes.

Q. They were using them, weren't they?

Mr. Lauerman: I object, that is immaterial.

The Court: Overruled, you may answer that.

The Witness: I don't know whether they were using them or not.

By Mr. Jacobson:

[51] Q. You didn't see them? A. No, I was not watching them.

Q. What were you doing? A. What was I doing?

Q. You were on the scene, weren't you? A. Yes.

Q. Were you just watching Father Groppi, or— A. No, I was supervising the scene.

Q. The whole scene? A. Yes.

Mr. Jacobson: That's all. The Court: You are excused.

RICHARD DEMBOWSKI, called as a witness on behalf of the State of Wisconsin, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Lauerman:

Q. Would you state your name please? A. Richard Dembowski.

Q. What is your occupation sir? A. Police Officer.

Q. For the City of Milwaukee Police Department? A. Yes.

Q. How long have you been so employed? A. Nine years.

[52] Q. Were you so employed on August 31st, 1967? A. I was.

Q. What were your hours of duty on that date, sir? A.

From 4 p.m. to 4 a.m. in the morning.

Q. Do you remember where you were at approximately 7 p.m. on that date? A. At 7 p.m. I was abreast of the marchers, going south on 12th Street, in a marked police squad car.

Q. Did you see the defendant, Father James Groppi on

that evening? A. I did.

Q. Did you happen to see him while in the company of Patrolman Brazzoni, and Sgt. Miller? A. I did.

Q. And what happened when you saw him in the company of Sgt. Miller and Officer Brazzoni? A. I assisted Sgt. Frank Miller and Patrolman Brazzoni in making the arrest of Father Groppi.

Q. And after Father Groppi was placed under arrest-

Mr. Jacobson: Just a minute, that could be a little misleading, what he was being arrested for at that particular time.

By Mr. Lauerman:

Q. Do you remember what he was being arrested for at that particular time? [53] A. Yes, sir.

Q. What was that? A. That was for the violation of

the Mayor's proclamation.

Q. What did you do after Father Groppi was arrested?

A. I took Father Groppi by his left arm, and began escorting him from the parade route.

Q. Where were you escorting him to? A. I was going to escort him to the paddy wagon, or patrol wagon.

Q. On your way to the patrol wagon, what if anything,

happened? A. A group of Commandoes tried to take Father Groppi away from us.

Q. So what did you do? A. I was instructed by Sgt. Frank Miller, that he would take care of Father Groppi, and I was to try to keep the other people away from the Priest.

Q. So what did you do?

Mr. Jacobson: That all becomes immaterial after that, I would object to any more testimony of what Officer Dembowski did, unless he was with Father Groppi.

The Court: I will overrule the objection.

By Mr. Lauerman:

Q. So what did you do? A. After Sgt. Frank Miller, and Patrolman Brazzoni took Father Groppi, I tried to push the marchers, or keep them away [54] from Father Groppi.

Q. And did you further accompany Father Groppi to the patrol wagon? A. I did not.

Q. You stayed behind? A. Yes, I was there at the initial place of arrest.

Q. Did you stay in the area where the Commandoes had come over? A. Yes.

Q. All right, did you, at any time, go to the rear of the paddy wagon? A. I did not.

Q. You don't know anything, about what happened, as far as Officer Buchanan and Father Groppi, at the rear of the wagon, do you? A. No.

Mr. Jacobson: I object to what the Officer has testified to, from the time he left Father Groppi, and ask that it be stricken as being immaterial as to the charge in question.

The Court: Overruled, it might be the res gestae, if the jury wants to attach any significance do so, if the members of the jury find they don't want to attach any significance to it, don't. Is that all of this witness?

[55] Mr. Jacobson: I have no questions.

The Court: You're excused.

Armando Brazzoni, called as a witness on behalf of the State of Wisconsin, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Lauerman:

Q. Would you please state your name? A. My name is Armando Brazzoni.

Q. What is your occupation, sir? A. Patrolman, with the Milwaukee Police Department.

Q. How long have you been so employed? A. Five years.

Q. So you were employed as a police officer for the Milwaukee Police Department on August 31st, 1967, is that correct? A. That is correct.

Q. Do you remember what your hours of duty were, on August 31st, 1967? A. Yes, it was 4 p.m. to 4 a.m.

Q. Do you remember where you were at approximately 7 p.m. on that date? A. Approximately 7 p.m., oh, in the vicinity of the 1100 block of West North Avenue.

Q. What were you doing at that place, on that date?

A. At that time, we were parallel on the street, going east,

[56] next to the march that was being conducted.

Q. Did you have occasion to see Father Groppi, while you you were in the presence of Sgt. Frank Miller, on that day?

A. Yes, I was along side of Father Groppi, about three feet to his right.

Q. What did you do? A. At this time I walked along side of him, and when we reached the 900 block of West North Avenue, we were instructed, or I was instructed by Sgt. Miller, to make any arrests, if necessary, for the violation of the Mayor's proclamation.

Q. Where was Father Groppi, at this time? A. Father Groppi was to my left.

Q. How far! A. About three feet.

Q. So what did you do? A. When the order came through to make the arrests, I reached over and grabbed Father Groppi with my left hand, and grabbed him around the right shoulder and collar.

Q. What did you say to him, if anything? A. I said to Father Groppi, you're under arrest for the violation of the Mayor's proclamation.

Q. Then what did you do? A. I then started to take him to the middle of the intersection, but at this time, there was several Youth Council members [57] that had Father Groppi around his arm, attempting to pull him away from me, I instructed Father Groppi to tell the Youth Council members to leave him go, and that he will not be hurt.

Q. What happened then? A. One of them, one of the Youth Council members continued to grab him, I then placed him under arrest also.

Q. Then what did you do? A. Then Sgt. Miller and Richard Dembowski came to my assistance, we then started to take Father Groppi to a patrol wagon.

Q. What if anything happened while you were going to the patrol wagon, with Father Groppi? A. In the middle of the intersection, I'd say approximately about 100 feet away from the wagon, Father Groppi went limp, he fell to

the city street, and he sat on the pavement, he refused to be taken to the wagon.

Q. So what did you do? A. I then immediately grabbed him, continuing to grab him, to lift him up, at this time I had a shot gun in my hand, and there were other Youth Council members, Commandoes who were attempting to pull him away from us.

Q. Were you able to get ahold of Father Groppi? A. Yes, after I had given my shot gun to another officer.

Q. How did you grab him? A. In fact, I had him at several different positions, and with [58] him kicking his feet in a motion, like pedaling a bicycle, pumping his feet back and forth—

Mr. Jackson: I don't like to interfere with the Officer's testimony, but these are self-serving statements, and we would ask to have their answers be more responsive to the questions being put to them.

The Court: Well, I think that was responsive.

Mr. Jacobson: The latter part of the answer isn't responsive.

The Court: I think it is responsive. Frame a new question.

By Mr. Lauerman:

Q. At that time, when you tried to grab him, what did you observe Father Groppi doing? A. He was kicking his feet, as if to pedal a bicycle, a motion back and forth.

Q. Who, if anyone, from the Police Department came to your aid? A. As I recall, it, at that time I now recollect—

Mr. Jacobson: I object to the form of the question Your Honor, I think that would be objectionable.

The Court: Just answer directly, who came to your aid at that time.

The Witness: At that time, I know of Sgt. Miller was at that spot, that I know of.

[59] By Mr. Lauerman:

Q. What did Sgt. Miller do? A. Sgt. Miller then grabbed him, I believe it was the right leg.

Q. Do you know what happened to Father Groppi's left leg? A. It was being held by another officer, at that time I didn't know who the officer was.

Q. And then, what did you, and Sgt. Miller, and the other officer do? A. We continued to—we picked him up, and carried him to the wagon at this time.

Q. You say you picked him up, and carried him to the wagon, could you explain whether you walked in front of Father Groppi and the other officers, or whether you were carrying up the rear, or just how was he being carried? A. Well, I was, I had one arm underneath Father Groppi and another one around his back, carrying him to that effect, and I believe I was facing toward the wagon.

Q. I see, your back was then to Father Groppi, and the other officers? A. That is correct.

Q. And you carried him in this manner to the wagon?

A. That is right.

Q. Now as you approached the wagon, or as you got to the rear of the wagon, what did you do? [60] A. Well, I kept losing my grip, because of the moving motion, and finally—

Mr. Jacobson: I am going to object to that, actually what he did, and that will be all we need.

The Court: He was moving in a motion. Frame a new question.

By Mr. Lauerman:

Q. You testified that you kept, you kept losing your grip?

A. That is correct.

Q. That would be the grip you had on Father Groppi?

A. That is correct.

Q. And would this be while you were taking him to the wagon? A. That is correct.

Q. And why did you keep losing your grip? A. Because his feet was in a moving motion, kicking them back and forth as if to be pedaling a bicycle or kicking—

Q. But at any rate, you did get to the rear of the wagon with Father Groppi? A. That is correct.

Q. As you got to the rear of the wagon, what did you do? A. The door was open, and I pushed him up into the wagon, there was a jerk all of a sudden, I don't know what caused the jerk, the kicking of feet, a real fast kick—

Mr. Jacobson: Just a minute, I move that be stricken Your Honor, he has testified to what he doesn't [61] know.

The Court: He is telling us what caused it.

Mr. Jacobson: So anything else is in terms of speculation on his part.

The Court: He is being honest, the jury can weigh if there was a jerk.

By Mr. Lauerman:

Q. There was a jerk, could you describe what you mean by a jerk? A. Just like this, in other words, fast movement.

Mr. Lauerman: Let the record indicate, the witness just then, twisted his body with his arms di-

rectly in front of him, to indicate his body was twisting.

By Mr. Lauerman:

- Q. Now you say—when you just made that motion for the jury, what are you describing? A. I am describing as if to make like a fast shove with the feet, or a push with the feet.
- Q. Were you describing—when you made this movement in Court just then, were you describing the motion of somebody's body? A. That is correct.
 - Q. Whose body was that? A. Father James Groppi.
- Q. All right, after Father Groppi made that motion, what did [62] you do, or what did you see?

Mr. Jacobson: I am going to object to the form of the question Your Honor, I don't know what kind of motion he is talking about.

The Court: You heard my ruling, it is for the jury to weigh. Next question.

Mr. Jacobson: It is assuming some facts, he is-

By Mr. Lauerman:

- Q. I will rephrase the question, after Father Groppi made the motion that you demonstrated in open Court, what did you do? A. Well at that time he was slipping out of my grip, I quickly regrabbed him, and pushed him into the wagon, and at this time, he stated, I want that man's badge number, and I placed him into the wagon further, and he says, I want that man's badge number, that fuckin' son-of-abitch.
- Q. After he stated this, what did you do? A. This—at this time, that was it, someone had grabbed me and pulled

me away for a moment, the doors were closed and I was instructed by Sgt. Miller to get on the wagon, and go right into the station with him, at this time.

Q. So you accompanied the wagon? A. I accompanied the wagon, on the rim, on the outside of the wagon to the back.

Q. Now as you were placing Father Groppi into the wagon [63] just prior to him making the movement that you demonstrated for us— A. Yes.

Q. Was your back turned, was your back—were you facing the back of the wagon? A. I was facing the back of the wagon.

Q. So you couldn't see what was happening behind you?

Q. Did you subsequently, after Father Groppi was placed in the wagon, have occasion to see Officer Buchanan? A. I did not see Officer Buchanan, until the next morning.

By Mr. Lauerman: That's all.

Mr. Jacobson: Your Honor, we are asking that the entire testimony of this officer be stricken, that clearly, quite clearly what he has testified to was set out in the complaint that was read to the jury. It is constituting resisting arrest charge, he didn't see anything at all. We are going to ask that all the testimony be stricken as immaterial and not relevant with which Father Groppi is before the jury today.

The Court: Objection overruled.

Cross Examination by Mr. Jacobson:

Q. Now, Officer Brazzoni, you say that—do you even know if Buchanan was one of the officers that was ac-

companying [64] Father Groppi to the patrol wagon? A. I did not know, no.

Q. At the time that you approached the patrol wagon, you say you had your arms around Father Groppi's under portion of his body? A. That's right.

Q. Would you have been facing the two police officers that were holding onto Father Groppi's legs? A. My back

would be to them.

Q. In other words, Father Groppi's upper portion of his body would have been in front of you, in terms of the direction that you were facing, is that correct? A. Well, his face would be this way.

Mr. Jacobson: Just to be clear, I think what I will have you do is, just put your arms around me, as if I was Father Groppi, so we can clearly see in which direction, so the jury doesn't have any problem seeing what position you were carrying Father Groppi to the paddy wagon. Now, I want the record to show that Father Groppi would have been in a—your left arm would have been locked around Father Groppi's left arm, and your right arm would be holding him in the small of his back, clutching his clothing?

The Witness: Yes.

By Mr. Jacobson:

[65] Q. He would—would have been in a horizontal position, with two officers, one on each of his legs? A. Right.

Q. And the—your back would have been toward the other police officers, is that correct? A. Yes.

Q. All right, do you know whether the police officers had their backs to your—Patrolman Brazzoni, whether you

know, whether the police officers that were on Father Groppi's legs, had their backs to your back? A. If they had their backs to my back?

Q. That's right. A. No, they were facing my back.

Q. In other words, then all three of you were backing Father Groppi—were you walking in—were you walking—were you the lead man? A. That's correct, I was walking in the same position of the others.

Q. But you were going forward? A. Correct.

Q. Well then, when you got to the paddy wagon that was opened did you attempt to put Father Groppi in, head first? A. Back first.

Q. Your back is that what your talking about? A.

Father Groppi's back.

Q. That's right, but you would have been— [66] A. Facing the wagon.

Q. That's right, you would have attempted to put his head— A. His head back—

Q. In first? A. His back portion to the wagon first.

Q. All right, now you say at the time that you pushed Father Groppi into the wagon, then head back portion first, you said you felt a jerk, a fast movement, is that right? A. Correct.

Q. You didn't—you didn't see what happened did you?

A. No, I didn't.

Q. In other words, anything that your describing as to what occurred at that moment, is just your way of trying to describe the feeling of the jerking motion, correct? A. Jerking motion, and that his feet was kicking, as I stated before.

Q. You don't know whether his feet were kicking? A. I know his feet were kicking, I saw the movement.

Q. All right, there was an officer on each leg? A. That is correct.

Q. That would have been more or less the officers carrying him along with you, carrying him into the paddy wagon?

A. Not with that kind of a reaction.

Q. Well, had you felt any of these jerks, this one jerk you described? [67] A. There had been several jerks, from the time we picked him up, until the time he was in the wagon, he was continuously moving his feet.

Q. You of your own knowledge, don't know if any officer was struck by Father Groppi's foot or anything?

A. At that time, I did not know, no.

Q. You didn't observe anything at all? A. I did not observe anything, I was pulled away to the side, I don't know if it was by another officer or what.

Q. So you just don't know? A. Yes.

Q. The testimony that you read, that you made in the record, is that, as you, as you felt this jerk, then shortly there after, you heard Father Groppi say, I want that man't badge number? A. Correct.

Q. And then he again said that, I want that man's badge number, and then you said with some force and some dramatics, that fuckin' son-of-a-bitch, is that correct? A. Correct.

Q. I assume, that the latter part of what you testified to what Father Groppi said, he said with the same kind of force and volume and emphasis, that you stated to the jury? A. Definitely.

Q. And there were quite a few people in the vicinity of that [68] paddy wagon, were there not? A. Quite a few other officers.

Q. Some newsmen? A. I don't know if there were newsmen.

Q. There might have been? A. Might have been, correct.

Q. If Father Groppi said, said with a volume that you indicated, it would have carried for some distance, isn't that right? A. I believe so, definitely.

Q. And there is no question in your mind that he might have whispered this, or anything of that nature? A. No, he did not.

Q. With quite a volume that he let loose? A. Right.

Q. That—that's all you heard him say, by the way, isn't it? A. Yes.

Q. He didn't say anything else, did he? A. Not that I recall.

Q. You're sure about that? A. Not that I recall.

Q. You were right there weren't you? A. Yes.

Q. I mean, if he would have continued to— A. What's that?

[69] Q. If he would have continued to swear? A. Yes.

Q. You would remember that wouldn't you? A. Yes.

Q. And he didn't swear again, did he, that was the only time? A. No, he used it twice.

Q. He used it twice? A. Correct.

Q. What did he say, tell me exactly what he said? A. Once as we were putting him in the wagon, he stated, I want that man's badge number.

Q. There is no swearing involved in there? A. Yes, he stated that twice.

Q. You just said that, I want that man's badge number? A. That's right, stated it twice.

Q. There is no swearing involved? A. Yes.

Q. There is swearing involved there? A. Yes.

Q. All right, then you say, he said, that fuckin' son-of-abitch? A. Correct.

Q. That is the third time? A. No, the second time he swore, he swore twice, that is all he swore.

Q. Is it your testimony, that what Father Groppi said was, [70] I want that badge, that man's badge number, that fuckin' son-of-a-bitch, and then he said that precise thing again? A. That is correct.

Q. Because you originally testified that first time, he said, I want that man's badge number, then repeated, I want that man's badge number, and then swore? A. No, he repeated, I want that man's badge number, and then he stated, I want that man's badge number, that fuckin' son-of-a-bitch, and we placed him in the wagon, then he said fully, I want that man's badge number, that fuckin' son-of-a-bitch.

Q. So he said it on several other occasions? A. Twice.

Q. And he said it with some volume? A. Yes, he did.

Q. All right, do you know who he was referring to? A. No, I don't, he—

Q. Now just answer my question, you don't know who he was referring to? A. No, I don't.

Q. So now, when you were actually at the wagon itself, when you were placing Father Groppi in the wagon, you actually didn't see anything did you? A. When I placed Father Groppi—

Q. You really didn't see anything, did you, in terms of what [71] he was doing? A. No.

Q. You just felt the jerk? A. That is correct.

Q. That is the extent of what you actually saw at that time and place? A. That is correct.

Mr. Jacobson: That's all.

Redirect Examination by Mr. Lauerman:

Q. In the back of the patrol wagon, was there much commotion? A. Oh, definitely there was, on the way into the wagon.

Mr. Jacobson: We are going to object to anything other than the answer to the question.

By Mr. Lauerman:

Q. As Father Groppi was being placed in? A. Oh sure, there was heckling of the police, the brutality, honkies, white honkies—

Mr. Jacobson: This is objectionable as being not in response to the question that was asked, certainly it isn't material to the charge that Father Groppi is before this jury on.

The Court: Well, at that time and place, there was a certain amount of commotion, let the jury weigh it one way or the other, if you feel it has significance all right, if you don't, you don't have to attach any.

[72] By Mr. Lauerman:

Q. A lot of commotion?

The Court: Yes, or no. The Witness: Yes.

By Mr. Lauerman:

Q. Would you say there was a lot of noise? A. Well yes, there would have been noise.

Armando Brazzoni—for Plaintiff—Recross Wilfred Buchanan—for Plaintiff—Direct

Mr. Lauerman: That's all.

Recross Examination by Mr. Jacobson:

Q. Officer, do you know on what charge Father Groppi is before this jury? A. Do I know the charge?

Q. Yes, if there was a lot of noise at that time and place, when you were placing Father Groppi under arrest, was it—

Mr. Lauerman: I will object.

Mr. Jacobson: We will withdraw that question. We have no more questions.

The Court: You're excused.

Officer Wilfred Buchanan, called as a witness on behalf of the State of Wisconsin, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Lauerman:

- Q. Would you please state your name? [73] A. Wilfred Buchanan.
- Q. What is your occupation sir? A. Police Officer, City of Milwaukee.
- Q. How long have you been so employed? A. Approximately 15 years.
- Q. So then you were a member of the Milwaukee Police Department on August 31st, 1967? A. I was.
- Q. Do you remember what your hours of work were on that date? A. I had started at 8 a.m. on that morning, and the time of going home was undecided, we didn't know.
- Q. Were you on duty at approximately 7 p.m. on that date? A. I was.
 - Q. Where were you at that time? A. On 9th and North.

Wilfred Buchanan-for Plaintiff-Direct

Mr. Jacobson: Could you talk a little louder. , The Witness: 9th and North.

By Mr. Lauerman:

Q. Did you have occasion to see Father James Groppi, while you were with Sgt. Miller on that date? A. Yes, I did.

Mr. Jacobson: That assumes some facts in evidence that hasn't been testified to, that he was with Sgt. Miller, you want to establish that he testified he was with—

Mr. Lauerman: But he hasn't so-

[74] Mr. Jacobson: I will withdraw my objection.

By Mr. Lauerman:

Q. About what time was this? A. About 7:15, I was on 9th and North, I had went up to 10th where I met Sgt. Frank Miller, and I was behind Sgt. Miller, with some other officers, walking east on North Avenue.

Q. Did you have occasion to approach Father Groppi?

A. I didn't know who he was, I was approaching when Sgt. Miller and another officer made an arrest, I was called to for assistance.

Q. You were called to for assistance? A. Yes.

Q. What did you do? A. I immediately ran over there, and said to him, on my way over there, some other men had been struggling, trying to pull the man away from the officers.

Mr. Jacobson: I am going to object, unless it the officer saw that happen, then I'd object to the answer as not being responsive.

The Court: Did you see that happen?

Wilfred Buchanan-for Plaintiff-Direct

The Witness: Yes.

The Court: He said yes.

By Mr. Lauerman:

Q. So you went over there? A. Yes.

[75] Q. What did you observe when you got there? A. One officer got the men who was trying to struggle the prisoner away from Sgt. Miller, and this other Officer, Brazzoni, he got them away, and we started to carry—then I recognized Father Groppi, after he had went limp.

Q. Did you see Father Groppi go limp? A. Yes.

Q. Is that when you first started carrying Father Groppi? A. That is.

Q. You grabbed his leg, what leg? A. His left leg.

Q. All right, and did you follow behind Officer Brazzoni?
A. Yes.

Q. In carrying Father Groppi? A. Yes.

Q. I see, you were facing the back of Officer Brazzoni? A. Yes.

Q. And what, if anything, did you observe Father Groppi doing, as you carried him to the wagon? A. On the way to the wagon, he was kicking his feet, not very violent, but he was kicking them.

Q. Now what if anything happened, and what if anything did you do, as you got to the rear of the wagon? A. I was trying to hold his leg, and I had my night stick in my hand, as I was trying to hold on, I didn't have a good [76] hold on him, he kicked out very hard, kicked his leg loose, and then he kicked me in the chest, knocking me on the ground, on one knee.

Q. Now, just so we are clear Officer Buchanan, could you please tell the jury, whether that man, who kicked you,

Wilfred Buchanan-for Plaintiff-Direct

is present here in Court this afternoon? A. The man who kicked me that night, is Father James Groppi.

Q. Is he present? A. He is.

Q. Could you identify him please? A. He is sitting in the middle of the two gentlemen, at the defense table.

Mr. Lauerman: Sitting in the middle at the second table, let the record show, the witness identified Father Groppi.

By Mr. Lauerman:

Q. After you were kicked and fell to one knee, what did you observe happen? A. He was shouting at me, you fuckin' son-of-a-bitch, to the effect, I want your badge number, which I didn't have any badge on.

Q. But you were in uniform? A. I was in uniform.

Q. Were the other officers who carried Father Groppi to the wagon, were they in uniform? [77] A. All the officers were in uniform there.

Q. And after you heard him state these words, what did you observe? A. He had repeated it again, the same words, you fuckin' son-of-a-bitch, I want your badge number.

Q. Then what happened? A. Then he was put in the wagon by then, and he was on his way.

Q. Did you subsequently receive medical treatment for your injuries? A. Yes, I later, I went to Mount Sinai Hospital, where I was treated for a bruise and a contusion on the chest.

Mr. Lauerman: That's all.

Cross Examination by Mr. Jacobson:

- Q. Why didn't you have your badge numbers on that night? A. We didn't wear badges.
 - Q. Why not? A. Under orders from the Department.
 - Q. Why! A. I don't question my superiors.
 - Q. Do you know why you-

Mr. Lauerman: Immaterial and argumentative.

By Mr. Jacobson:

Q. You answered you don't know, is that correct? [78] A. I don't question my superiors, my personal opinion, it is a dangerous weapon, it can be ripped off.

Q. Is that why you-

Mr. Lauerman: I will object, he anwered that question.

Mr. Jacobson: I am asking why he wasn't wearing that badge that night, if he—if that is the reason, or if that is any speculation on his part.

The Court: If you know.
The Witness: I don't know.

Mr. Jacobson: All right, that is all I wanted to know.

By Mr. Jacobson:

Q. In other words this was on orders of your superiors, you weren't supposed to wear—

Mr. Lauerman: Objection, repetitious. The Court: He has answered that.

By Mr. Jacobson:

Q. You say you had your night stick in one hand, and Father Groppi's leg in the other hand, is that your testi-

mony? A. No.

Q. What is your testimony, how were you carrying him to the patrol wagon? A. I had the night stick in the hand, and that hand was around Father Groppi's leg, so was the other one.

Q. You had the night stick as well as Father Groppi's

leg! [79] A. That is correct.

Q. And you were holding on pretty tight were you, to his leg? A. Apparently not tight enough.

Q. Apparently—I am not asking you for speculation, whether you were holding tight. or whether you weren't?

A. I had a firm grasp, but it was not that tight.

Q. Isn't it a fact that you were actually digging your thumb into his ankle as you were taking Father Groppi

in the wagon? A. No, sir.

Q. And when you were carrying Father Groppi into the patrol wagon, was it, as you got to the patrol wagon, you say the doors were opened? A. That's right.

Q. And did the thrust toward placing Father Groppi into the patrol wagon, commence before he kicked loose? Do you understand my question? A. No, not clear.

Q. When you got to the patrol wagon, you were holding

his left leg, correct! A. Yes.

Q. And Sgt. Miller had his right leg? A. That is correct.

Q. And Brazzoni was holding onto his upper portion of his body? [80] A. Yes.

Q. In order to place him into the wagon, you would have to thrust him in, isn't that correct? A. Yes.

Q. Had that thrust commenced before Father Groppi

had kicked his leg loose? A. No, not that I recall, it happened so fast, I couldn't say definitely.

Q. Would you—would you deny that the reason Father Groppi kicked his leg loose, was the grip on his leg? A. Certainly I would.

Q. What makes you so certain of that? A. I never dig my nails into anybody, I don't dig, I used my fingers for—

Q. You have testified that you had a firm grip on his leg? A. Yes.

Q. How would you apply a firm grip, if you wouldn't be applying— A. An even hold, not just one finger, sir.

Q. You certainly understand that with the hold you had, you could have applied pressure with your thumb, on his leg, or on his ankle portion, isn't that correct? A. I could have hit him with a night stick too sir, but I didn't.

Q. You don't deny the grip that you had on his leg, or ankle, [81] was of a nature—you did have your hand in fact, on his ankle? A. Yes.

Q. You deny that? A. No, I don't deny that.

Q. That was the grip you had? A. Yes.

Q. Now you indicated that he kicked his leg loose? A. Yes.

Q. Then, did he then come down on his left leg? A. A. When he kicked me with his left leg?

Q. After he kicked his left leg loose? A. He was still suspended.

Q. That's right? A. Yes.

Q. He never brought his leg completely down, his left leg? A. No.

Q. In other words, while he was still in the air, the thrust of his leg caught you in the chest? A. He pulled his leg back to his body, and kicked that way, not football style.

Q. What? A. He pulled it to his body, and kicked downward, where I was.

Q. In what position were you in, at that time? [82] A. I was facing—he was upright, facing in a supine position, I was holding his leg toward the bottom of his foot.

Q. Well, would he have been perfectly horizontal, when you approached his— A. Not perfectly horizontal, not

perfectly.

Q. His head would have been a little higher? A. That I don't know, I was concerned about getting him over there.

Q. You were holding his leg about hip height weren't you, isn't that where you were resting his leg? A. Yes.

- Q. And you say he kicked down at you? A. When I say down, I mean from his body downward, and I would be at the base of him, so it would be a movement like that, not downward.
- Q. What portion of your chest did he hit? A. The upper part, right in here.

Q. About shoulder high? A. Yes, about right in here.

- Q. You deny that this striking of his foot, what you described as a kicking of you, was a result of any pressure that you applied on his ankle as you— A. Yes, I deny that.
- Q. Now you testified that Father Groppi indicated that when—strike that—who then placed Father Groppi in the patrol [83] wagon, who placed him in the patrol wagon? A. After I went down on my knee, I think the other two officers put him in themselves, I lost my grip then.

Q. At that point, you say, you heard Father Groppi say, you fuckin' son-of-a-bitch I want your badge number? A.

Yes.

Q. And then he repeated that? A. Yes.

Q. And would you say that he said this, with some volume? A. Yes.

Q. If there was—were there other persons in the vicinity?
A. Yes.

Q. Newsmen and photographers? A. I don't know, I wouldn't-

Q. If there were people in that vicinity, they would have been able to—

Mr. Lauerman: I object, calls for a conclusion.

The Court: If you know,

The Witness: I know of one newsman who was behind us, when I was turned, he was laid out flat, what happened to him, I don't know.

By Mr. Jacobson:

Q. I think that really isn't responsive to the question, what I want to know is, whether or not other persons were in the vicinity of the wagon, would they have been able to [84] hear Father Groppi make this statement to you?

Mr. Lauerman: I would object, calls for an opinion.

The Court: If you know.

The Witness: I couldn't answer that.

By Mr. Jacobson:

Q. Would you say that he did use some volume? A. Yes, but there was volume coming out of the back of the wagon also.

Q. There was some volume, but you had no trouble hearing Father Groppi say that? A. Definitely, not.

Q. Very clear? A. Yes.

Q. How far away from the back of the wagon, were you?

A. Oh, I would say maybe two feet.

Q. A couple feet? A. Yes.

Mr. Jacobson: That's all.

Wilfred Buchanan-for Plaintiff-Redirect

Redirect Examination by Mr. Lauerman:

Q. If you know, what part of Father Groppi's foot struck your body? A. It would have been the entire foot more or less.

Q. Just rather flat? [85] A. Yes.

Mr. Lauerman: All right, that's all.

The Court: We will take a short recess.

(Court reconvened at 4:10 p.m., February 8th, 1968.)

(Jury present.)

Mr. Lauerman: Your Honor, the State rests, subject to rebuttal.

The Court: All right, the State has presented its case to you and has rested subject to rebuttal, to-morrow morning at 8:30 sharp, we will commence and proceed with the trial, then the defense will put in its case to you, then at the conclusion of that, after listening to the testimony of the witnesses for the State and the witnesses for the defense, then I will read my instructions to the jury, and then from the testimony on both sides, and the instructions I give you, you will determine the innocence or guilt of the defendant. So be here at 8:30 sharp, the defense will put in its case, and we will conclude this trial.

PROCEEDINGS

February 9th, 1968.

APPEARANCES: (Same as above noted).

Motion to Dismiss

The Court: Before we call out the jury, the [86] State has rested, are there any motions by either side?

Mr. Jacobson: If it please the Court, at this time, the defense moves to dismiss the charge against Father Groppi, on the basis that the State has not proved beyond a reasonable doubt, that on August 31st, 1967, Father Groppi in fact resisted an officer, pursuant to the elements required under Section 946.41, sub section 1. The charge against Father Groppi as far as the resisting an officer offense, indicates that Wilfred Buchanan personally observed the defendant resist, Buchanan states when said defendant was being carried to a police wagon, after being placed under arrest, defendant began kicking his legs, striking said officer with his foot, and then defendant stated to Buchanan a certain phrase. Now as far as resisting arrest, the material offense, as far as the actual resisting would be, the kicking of the legs and striking the officer in the body with his foot, any verbal statement that accompanied such physical action, in of itself, the verbal statement wouldn't constitute a resisting an arrest. Therefore, based on the witnesses that were called, the Inspector who was the first witness, testified only regarding his giving certain-reading of the Mayor's proclamation, he wasn't at all present at the time Father Groppi was placed in the patrol wagon by Buchanan, therefore the Inspector's testimony is all immaterial as to the resisting charge. Sgt. Frank Miller was able to [87] testify that Father Groppi did in fact, kick the officer in the chest with his left leg, Buchanan was on the ground, and that there was some verbal utterances. The testimony of Richard Dembowski was again not material to the resisting charge, that

Motion to Dismiss

Dembowski was preoccupied with holding back some Commandoes, from the actual carrying of Father Groppi to the paddy wagon, and he admitted he wasn't present after he was requested, or instructed to hold back some Commandoes, so he doesn't know what happened at the paddy wagon, so his testimony is immaterial. Brazzoni, he testified that his back was to Buchanan, and he didn't know who Buchanan was, his back was to Buchanan, and Miller, as they carried Father Groppi to the paddy wagon, that he didn't see Father Groppi kick anybody, although he felt a jerk, and he said that the body was twisted; and then he did indicate some verbal utterances, and then we have the testimony of Buchanan, that he was in fact kicked in the chest, and he indicated that it was by the whole foot of Father Groppi, it was the flat portion of the foot, and he felt the entire impact of the foot, it would have been on the chest. So as far as actual testimony in the record is concerned, we have only two officers that were able to testify that Father Groppi kicked Buchanan, that would be Buchanan, himself, and Sgt. Miller. Now, the testimony is not clear that Father Groppi intentionally [88] kicked Buchanan in the chest, and therefore it is the position of the defense, that the State has not met the burden required by the Statutes in question, to prove the offense of resisting an officer. On that basis the defense would move to dismiss at this time.

Mr. Lauerman: Just one point Your Honor, apparently Counsel, on the basis on which he would ask for dismissal, was, as he indicated, at the end of his statement, namely, there is no showing that

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there was an intentional kicking, I believe that the element that he is speaking of, is that in—and its suggested in the instructions in this case, defendant resisted the officer knowingly, defendant knew or believed that he was resisting the officer, while the officer was acting in his official capacity and with lawful authority. I think that the facts as testified to by the police officers, namely that Father Groppi did kick an officer, accompanied by the words which the officer testified to that were spoken, certainly indicates that Father Groppi did knowingly resist.

The Court: The motion to dismiss on behalf of the defendant is denied. Let's proceed with the defendant's case. You reserved your opening statement Mr. Jacobson, do you wish to call out the jury and start?

Mr. Jacobson: Yes, Your Honor, all set. (Jury present.)

[89] The Court: As I indicated to you last night, before we adjourned, the State has presented their case to you and rested, subject to rebuttal, now the defense will put in their case. Mr. Jacobson has reserved his opening statement, which he can under the law, and he will now give it to you at this time, after that the defendant will produce its witnesses.

Mr. Jacobson: Ladies and Gentlemen of the Jury, as the Court has indicated to you, we reserved our opening statement at the beginning of this case, in order to present this opening statement to you, before the defense put on the witness stand the various witnesses that we would be calling, to elicit the evidence from the defendants point of view, as to the events that occurred on the evening of August 31st,

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1967. Now the Court will instruct you at the close of the case, that the opening statements of both the District Attorney and myself are not evidence, you are not to put anything that we say-an opening statement is merely a summary, narrative, of what both Counsels intend to have elicited from the witnesses in the form of testimony, which in fact is evidence, and the facts, the evidence, that you are to determine the guilt or innocence of the defendant in relation to the charge with which he has been brought before you. Now, our statement of what occurred on the evening of August 31st, is as follows, and our [90] witness will testify to this fact. The night of August 31st, 1967, Father Groppi with several hundred other young people of various ages, all kinds of ages, got together at St. Boniface Catholic Church, there was a series of marches going on, at that time, for open housing in the City of Milwaukee, the Mayor of Milwaukee in fact issued a proclamation banning certain demonstrations, during certain hours, in certain areas, in the City of Milwaukee. which was put into effect the night before the march that took place, involving Father Groppi, eventual arrests for resisting arrest occurred the following night, the second night, the night of the 31st of August, 1967, about 7 o'clock Father Groppi, and these several hundred young people of all ages, they left St. Boniface Church, St. Boniface is on 11th and Clarke, they proceeded to go down 11th Street in a southerly direction toward North Avenue, Clarke is one block south of North Avenue, one block in a northerly direction to North Avenue, then they turned toward the east, and proceeded to walk down

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to 9th and North Avenue, that is as far as the March got, at that time there were orders to the effect. that the police were to stop the march, in fact that is when Father Groppi was placed under arrest. Father Groppi had gotten to North and 9th, at the time he was put under arrest, for violating the Mayor's proclamation. The paddy wagon was stationed [91] between 9th and 10th, when the arrest was made of Father Groppi by several police officers. They began marching him back toward the paddy wagon, between 9th and 10th, at that time some of the Commandoes, and other Youth Council members were getting close to the officers, there was some commotion, Father Groppi went limp, some officers then picked him up, one officer that picked him up, picked him up by his back portion, one officer grabbed his leg, and another officer grabbed his other leg, and the three officers proceeded to carry him toward the paddy wagon. Now the paddy wagon was facing toward 9th, in other words in an easterly direction, so when they got towards walking him back to the paddy wagon, they were walking to the westerly side, when they got to the front of this paddy wagon, the officer that was on Father Groppi's left leg, began, let's put it this way, and the testimony will so indicate that Father Groppi felt some pain on his left ankle, as a result of the pressure that the officer was exerting, in holding his left leg, whether there was gouging, or what it was, Father Groppi felt sufficient pain that he told the officer, that the other officer is hurting my left ankle, as the officers continued to carry Father Groppi toward the back of the wagon, the pressure began in the front

of the wagon, as he went to the back of the wagon, the pressure Father Groppi felt was of sufficient intensity, that he said, [92] that officer is gouging my ankle, I'd like to know his name, and I'd like to have his badge number, and he was then placed in the paddy wagon, and he repeated, I'd like that officer's name, he gouged my ankle, I'd like his badge number, and then the doors of the paddy wagon closed, and while he was in the paddy wagon, he took off his shoe, and there were some people in the paddy wagon that observed Father Groppi rubbing his ankle as a result of what Father Groppi indicated, was the pressure that had been applied to his ankle, as he was being carried into the paddy wagon, and that is the defense's case.

TESTIMONY FOR THE DEFENDANT

FATHER JAMES EDMUND GROPPI, called as a witness in his his own behalf, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Jacobson:

- Q. Would you state your name? A. Father James Edmund Groppi.
- Q. And where do you reside at the present time, Father Groppi? A. St. Boniface Church, 11th and Clarke.
- Q. And you were present in the Courtroom yesterday, were you not, when certain officers of the Milwaukee Police Department, testified to certain events that occurred on the [93] evening of August 31st, 1967, involving yourself? A. I was.

Q. Were you in fact at St. Boniface Church at about 7 o'clock on that evening, that is, on the 31st of August, 1967? A. Yes, I believe that was the time.

Q. And what were you doing at that time, and for what purpose were you there? A. We had an assembly, of black and white people from the community, discussing the Mayor's proclamation, the demonstrations, the arrest of Youth Council members and people of the community on the previous night.

Q. Were there in fact, marches occurring in the City of Milwaukee at that time, which you were involved? A. Yes.

Q. What were the marches all about?

Mr. Lauerman: I object, that would be immaterial. The Court: I will overrule the objection, you may answer that.

The Witness: Marches were for a fair housing bill, to consider the right of freedom of movement within the confines of our country and also the last couple of days were also in process of what we believed the Mayor, taking our right of freedom of speech and freedom of assembly.

By Mr. Jacobson:

Q. Now, did you in fact on the evening of August 31st, 1967, [94] have a march, which began at St. Boniface Church? A. August 31st?

Q. Yes. A. Yes.

Q. What time did you leave the Church with this march!
A. I don't recall the exact time, I imagine it was between 7:30 and 8 o'clock, somewhere in there.

Q. And would you indicate what occurred when you left the Church? A. Well, we left the Church and began to

march south on 11th Street, and to march south to North Avenue, when we got to North Avenue, we turned east.

O. How many persons-strike that-you marched from

Clarke to North Avenue? A. Yes.

O. And in what position in this march were you? A. I was in front of the line, with certain Youth Council members in front of me, not too many.

Q. When you got to North Avenue, you proceeded east?

A. That is correct.

Q. What occurred then? A. Well we proceeded east as far as-we didn't get quite to 9th Street, on 10th Street I believe, on North Avenue, and it was then that Officer Brazzoni came behind me, and placed me under arrest.

Q. Did he indicate what you were being placed under arrest for? [95] A. Well, the officer who was up yesterday, the first one, mentioned he said this over a bull-horn, I don't recall, this is most likely what happened, he announced that we were in violation of the Mayor's proclamation, we continued to march, we were going to City Hall by the way, to question the Mayor on the proclamation, then Officer Brazzoni placed me under arrest, taking me from behind, by the coat and collar.

Q. That was on 9th and North Avenue? A. That is correct.

Q. And what occurred after Officer Brazzoni had placed you under arrest? A. He walked me to the wagon, there was some scuffling behind me, I couldn't see what was happening.

Q. You, yourself wasn't scuffling? A. No. I was not.

Q. What happened? A. He led me to the-around the front of one wagon, but then it was quite a distance from where he walked me east to where we had to come back west, around the wagon, I don't recall how far, but as we

turned around the wagon, I went limp, and officer—Officer Brazzoni began to carry me from the back, and two other officers, one officer by my right leg, and another officer by the left leg, began to carry me to the wagon.

[96] Q. How far at the time that you were being carried by the officers, were you from the paddy wagon? A. I don't recall, oh, 10, 15 yards, that is just a general estimate, I don't know.

Q. What happened then? A. Well Officer Miller had me on the right leg, and Officer Buchanan had me on the left leg, and it was than that Officer Buchanan began to intentionally gouge his fingers—

Mr. Lauerman: I object, it calls for an opinion and conclusion.

By Mr. Jacobson:

Q. Just say-

The Court: All right, I will sustain the objection, and then just tell if anything, what happened.

The Witness: I was being carried to the wagon, and Officer Miller had me by my right leg, and Officer Buchanan by the left leg, and Officer Brazzoni around the back.

By Mr. Jackson:

Q. As you were being carried to the wagon, what happened? A. My foot began to hurt, as if someone were digging their fingernails into my foot.

Q. You felt pressure being applied to your foot, by one of the officers? A. More than pressure, it was a scratching, and I—

[97] Q. Which Officer was that? A. Officer Buchanan.

Q. He was carrying your left leg? A. Right.

Q. Then what happened? A. I said to Officer Brazzoni, behind me, he is gouging his fingers into my foot.

Q. What happened then? A. He didn't say anything, and the gouging continued, and as I got to the wagon, I said again, he is gouging his fingers into my foot, and I asked, what is that officer's badge number and—

Q. Were you at the back of the paddy wagon when you

said that? A. Yes.

Q. Then what happened? A. Then I was placed into the wagon by Officer Brazzoni, Buchanan was still on my foot, and Sgt. Miller on the other foot, they placed me in the wagon, I asked again what is that officer's badge number, he isn't—I noticed he wasn't wearing a badge, I was placed into the wagon, I said to Officer Brazzoni, what is that officer's name, and Officer Brazzoni said, that is for you to find out.

Q. What happened then? A. I was in the wagon, I men-

tioned to Terry Astuto, secretary there, and-

[98] Q. Who is—were there other people in the paddy wagon? A. Yes, the paddy wagon was filled with people, in fact, I was sitting on someone's lap, right there.

Q. You talked to someone in the paddy wagon about

what had occurred? A. Yes.

Q. What did you say? A. I mentioned that this police officer was applying pressure to my foot, scratching, digging into my foot, I took off my shoe and socks and showed these marks to some of the people at—

Q. At that time were the doors closed? A. Of the paddy wagon, yes, then I took off my shoe and showed these marks, and then Officer Brazzoni rode on the back of the

wagon, I believe.

Q. You heard Sgt. Miller, and Officer Buchanan testify yesterday, did you not? A. Yes.

Q. And you heard him say that you had kicked Officer Buchanan in the chest, did you hear that testimony? A. Yes.

Q. Did you kick Officer Buchanan in the chest? A. No, I did react to the pressure placed on my leg, I say I did wriggle my foot and try to get my foot free, because of the pressure on my foot did hurt, but I did not kick [99] the officer in the chest.

Q. You heard the officers, that is, Miller and Brazzoni and Buchanan, indicate that you said, you fuckin' son-of-abitch, I want your badge number, did you hear that? A. Yes.

Q. Did you say that? A. I did not use any vulgarity whatsoever.

Mr. Jacobson: That's all, we rest.

Mr. Lauerman: Your Honor, the state requests a very brief conference in Chambers, with Counsel, that way the jury will not have to leave.

The Court: Pardon me.

Mr. Lauerman: That way the jury doesn't have to leave.

(IN CAMERA)

The Court: Mr. Lauerman has asked for a conference.

Mr. Lauerman: Yes, Your Honor, when Father Groppi started testifying, he indicated that around 7 p.m. on August 31st, at St. Boniface Church, they had an assembly discussing the Mayor's proclamation, and how they demonstrated, and that it would probably be in violation of their constitutional rights to march, and some other words that I didn't take

down, in my words, words to the effect, it was against their rights, and taking away their rights, the State's [100] objection at that time, the State's objection was on the immateriality of that tesimony, when it was offered.

The Court: Right.

Mr. Lauerman: May I have Father Groppi's answer read back.

(Answer read back.)

"Marches were for a fair housing bill, to consider the right of freedom of movement within the confines of our country and also the last couple of days were also in process of what we believed the Mayor, taking our right of freedom of speech and freedom of assembly."

Mr. Lauerman: At this time we believe that testimony is immaterial, in that it had only the effect of inciting emotions in the minds of the jurors, that it is not a fact in this case, and that it was of a prejudicial nature, and would be grounds for a mistrial, and the State would reserve its right to move for a mistrial at a later time, in this trial, on this point, and of course if the testimony of other witnesses, any other witnesses would be to the same effect, the State, well of course will make renewal of the same objection and of the same motion at that time.

The Court: All right.

Mr. Jacobson: May I respond, Your Honor, the [101] defense, may I respond in the record. The defense's position is that the State wants its cake and eat it, too, on two basis. One, prior to this trial, the Defense Counsel approached the Assistant District Attorney, John Lauerman, and in fact indicated to John

Lauerman, that Defense Counsel saw no way that this case could be tried without the Mayor's proclamation at issue, in that the resisting arrest and the Mayor's proclamation is so closely intertwined, it is impossible to separate out the two matters. Therefore, the Defense Counsel asked John Lauerman, and talked to the District Attorney Hugh O'Connell. Furthermore, because the Mayor's proclamation was at issue, Defense Counsel saw no way to proceed, without putting the Mayor of the City of Milwaukee under subpoena, that the Defense Counsel asked John Lauerman to tell that to Hugh O'Connell, and to ask the State to join the Defense Counsel in putting the matter over, until the Federal Court had determined the constitutionality of the Mayor's proclamation. John Lauerman informed Defense Counsel that the position of-Hugh O'Connell said that the case should proceed on the date that it was set for, and the Defense Counsel should subpoena whatever witnesses was necessary, to establish his case, that is point one. Point two, Defense Counsel objected to the Mayor's proclamation being put in evidence, during the State's case, on the basis that it was immaterial, that [102] request, that objection was overruled, the Court specifically allowed the proclamation to be put into evidence. Now, the Mayor's proclamation has been put into evidence, there is testimony that was put in the record by two police officers, who knew nothing about the resisting offense, the Court ruled that it was material on the basis that it had to do with the Mayor's proclamation, now Defense Counsel attempts to put in some testimony, by his witnesses regarding the Mayor's proclama-

tion, and the defense witnesses' reaction to that proclamation, and the State comes in and all of a sudden, this is immaterial, it is prejudicial, it has grounds for mistrial, the State wants their cake and eat it, too. They want to put in all their testimony on the basis that the Mayor's proclamation is a lawful order, and police officers wanted people to obey that particular proclamation, and in fact it wasn't obeyed, and arrests occured, resisting followed, now when Defense Counsel wants testimony on that subject matter, State wants to preclude defense to do so, our position is that it is all very material to the proclamation.

The Court: We will proceed with the trial, I understand there are thin lines, but I will clear up any matters that may arise, so I don't think this concerns either side, if Mr. Lauerman objects, and reserves his ruling for a mistrial, fine, I will allow that, okay.

[103] (In Open Court)

(Jury Present)

Mr. Lauerman: May I have two minutes?

The Court: All right.

Cross-Examination by Mr. Lauerman:

Q. Father Groppi, you testified that you began your march a little after 7, 7:15, 7:30? A. Yes, I don't recall the exact time it was, I guess it was early evening.

Q. And you testified that you remembered a police officer with a bull horn, reading something? A. I don't even remember that, it's a possibility this is what happened, because this is what the Police Department does when it wants people to know about violations of some law.

Q. Were you at the front of this march? A. Yes.

Q. Do you remember seeing Inspector Ullius, or a member of the Police Department with a bull horn? A. No, I don't.

Q. You don't remember, you don't remember specifically, a police officer using a bull horn? A. No, I don't, I'd say it is quite possible that he did.

[104] Q. You say you got to 10th and North, where Officer Brazzoni placed you under arrest? A. Between 9th and 10th and North, yes.

Q. Were you still at the head of the line, at that time? A. Yes, I was.

Q. And did he tell you, that he was placing you under arrest for the violation of the proclamation? A. Yes, I believe he did.

Q. Was he the only officer in your immediate presence at that point? A. Yes, I could not see behind me, he had a very firm grip on the back of my coat, I couldn't turn around.

Q. He stated words to the effect, Father come with me so you won't get hurt? A. Yes, he said something, Father don't worry, no one is going to hurt you, and he grabbed me very firmly.

Q. And he directed you to go with him? A. Yes.

Q. And then did he alone, begin to walk you toward the wagon? A. Yes.

Q. Now did any scuffle ensue in the immediate presence of yourself and Officer Brazzoni? A. I did not see any, I could not turn around, there was some scuffling going on behind me, as soon as Officer Brazzoni grabbed me, but I could not see what went on [105] behind me.

Q. Did Officer Brazzoni have you by one of your arms? A. Not at this particular point, I don't believe, he just had me very firmly, behind the coat and by the collar.

- Q. Did anyone grab you by either of your arms? A. I don't recall.
 - Q. It could have happened? A. Could have happened.
- Q. Did you feel some tugging going on with your body, by any individuals? A. I don't recall.
- Q. You don't recall that, how far were you would you estimate from the wagon when Officer Brazzoni first placed you under arrest? A. It was quite a distance, I couldn't give an exact estimate of the distance, I remember we walked further east on North Avenue, and then, I believe we walked around one police wagon, we had to come to a second one, that was parked behind it, so we walked east on North Avenue around some vehicle, and walked west on North Avenue to another vehicle.
- Q. Okay, I'd like to ask you this question, how far did you walk with Officer Brazzoni, before you went limp? A. Oh, I would give an estimate of approximately 20, 30 yards, I could not give an exact distance here.

[106] Q. And after walking with Officer Brazzoni for 20 or 30 yards, what caused you to go limp, why did you go limp?

Mr. Jacobson: I object to that Your Honor, it's not material.

The Court: Overruled, you may answer that.

The Witness: I was arrested a number of times in Civil Rights demonstrations, going limp, does not constitute resisting arrest, and I went limp.

By Mr. Lauerman:

Q. Did you sit on the pavement? A. Well, when you go limp, you just let your body go limp, I don't think I reached the pavement, Officer Brazzoni prevented me from completely going to the pavement.

Q. And then Officer Brazzoni grabbed the upper part of your trunk, of your body? A. My chest, yes.

Q. And Sgt. Miller and Officer Buchanan grabbed your legs? A. Right.

Q. One on each leg? A. Right.

Q. How far from the wagon were you at this time?

A. I would say, about 20 yards.

Q. After Officer Brazzoni, and Sgt. Miller and Officer Buchanan picked you up, to take you the rest of the way to the wagon, did you kick at all, on the way to the wagon? [107] A. No, I did not.

Q. You didn't kick at all? A. No, I did not.

Q. Did your body squirm? A. No, I did not, I went limp.

Q. In other words you—it's your testimony that you remained entirely limp! A. Limp.

Q. Didn't really move? A. I did not move, or wiggle, or try to get away from the police officers, I went limp.

Q. How many hands—strike that—did Sgt. Miller use both of his hands to maintain his grip upon you? A. I don't remember, he had me by the right leg, whether or not he had both hands on me, I don't recall.

Q. Did he have you high on your leg, up above the knee, or down near your ankle? A. I don't recall that either, I know he had my right leg.

Q. Did he have anything else in either of his hands? A. I don't recall.

Q. Did Officer Brazzoni, did you feel Officer Brazzoni change his grip upon you at any time, during the course of your walk to the wagon? A. Well no, after I went limp, he took me by the chest, I didn't feel anything.

[108] Q. Did you feel him losing his grip upon you at any time? A. No.

Q. Would you have slipped from the grip that he had on you, at any time? A. No.

Q. In other words he maintained one steady grip? A.

Yes.

Q. Did Sgt. Miller lose his grip on your right leg at any time, that you can remember? A. No, not that I can recall.

Q. Did Officer Buchanan lose his grip on your left leg at any time that you can remember? A. No.

Q. On your way to the wagon? A. No.

Q. You were wearing normal clothing, is that correct, in other words you had pants, shoes and socks— A. I was dressed.

Q. Just about like you would be, here in Court? A.

Right.

Q. So you were fully clothed? A. Certainly.

Q. Then as you got to the wagon, you felt this discomfort, is that correct? A. I felt a gouging in my foot with fingernails.

[109] Q. Well now, you said you felt gouging with fingernails, did you see anybodies hands, did you see the hands that were holding your legs? A. Yes, I did.

Q. You could see them? A. Yes.

Q. So your head was higher than your legs? A. Yes.

Q. You were on a slant? A. Right.

Q. With your head higher than your feet? A. Right, Officer Brazzoni is much taller than Officer Buchanan.

Q. Did Officer Buchanan have anything in his hands?

A. Not that I recall, he had both arms around my foot, his hands at the end of my leg.

Q. You say both arms around your feet? A. No, he had

his hands around my ankle.

Q. Was he just holding you, within his hands? A. Something similar to the motion that you just made.

Q. In other words holding kind of like this? A. Right.

Mr. Jacobson: Would you describe that, for the record.

Mr. Lauerman: For the record, I am extending my hands before my body, just my hands, in a fashion whereby [110] you would hold a round object in your hands.

By Mr. Lauerman:

Q. When you first felt something at your left foot, did you begin moving that leg, your left leg? A. I wiggled it slightly.

Q. And I think it was your testimony, that you asked Officer Brazzoni, or told, Officer Brazzoni what was happening? A. Yes, I said, hey, that police officer is digging his fingers into my foot, I told him to stop it.

Q. Did Officer Brazzoni hear you, or do you know?

A. He sure did.

Q. He did, was there a lot of noise around the wagon? A. Somewhat, not too much.

Q. Was there noise coming from the direction from where the rest of the marchers would be, at this time? A. There was some noise, but he could hear very distinctly, there wasn't that much noise.

Q. And you told him twice, is that—was that your testimony, before you got to the back of the wagon? A. Yes, I don't recall how many times I said it, hey, that police officer is digging his fingernails into my foot, tell him to stop it, and then saying, what is his badge number, but he was not wearing a badge, makes it very difficult to identify people.

Q. Wouldn't he had to, if he was using his hands in the manner [1111] you described, wouldn't this be through your sock? A. Pardon?

Q. Would this be through your socks, that he was doing this? A. Yes.

Q. All right, now when you got to the back of the wagon, was the door of it open? A. Yes, I believe so.

Q. You said when you got into the wagon, it was filled up? A. Correct.

Q. So if the door was opened when you got there, you probably saw individuals in the wagon, as you were behind the wagon, is that correct? A. I was placed in, back first.

Q. So you didn't see— A. I didn't see much, or who was in there.

Q. As you came around the corner to the back of the wagon, were you able to observe into the wagon? A. No, I was looking at my foot, and complaining to the officer who was carrying me, something was happening to my foot, I wasn't paying too much attention to the wagon.

Q. Did you hear any voices coming from the wagon?

A. I wasn't paying attention to that, I don't recall.

Q. Was there noise at that place, behind the wagon, in other words, was there a lot of noise behind the wagon, as you got there? [112] A. I don't recall, there was some noise in the area, because of all the arrests going on, but I don't recall how noisey it was.

Q. Now, you freed your left leg, before Officer Buchanan released his grip, is that correct? A. No.

Q. So it is your testimony, that he entirely released his grip upon you before—strike that—isn't it a fact, that you did pull your left leg from Officer Buchanan, before he released it? A. No.

Q. And isn't it a fact also, that you did kick out with your left foot? A. No.

Q. Did you see Officer Buchanan on either his left, or right knee, at any time? A. No.

Q. You didn't see him, in a crouched position? A. No, after I was—

Q. Just answer the questions Father. It is your testimony that your foot did not make contact with his chest at all? A. That is correct.

Q. And it is your testimeny, you at no time, used any words that may be characterized as vulgar? A. That is correct.

[113] Q. Just before being placed in the wagon, did you make a sudden movement of your body? A. I don't recall, I know I was wiggling my foot, and trying to get it away from the gouging in my ankle.

Q. Now wiggling, wouldn't ordinarily— A. I don't recall, how did you explain it, jerking foot?

Q. A jerking motion with your body, you don't recall making one? A. That is correct.

Q. Normally, just wiggling a foot couldn't cause a sudden jerk of the body? A. This is true.

Q. Did Sgt. Miller also release his grip of you, prior to you being put into the wagon? A. Not prior to, and I was placed in the wagon, then the officers released me.

Q. Well did they, the three officers, sort of lift you up into the wagon? A. That is correct.

Q. And you went right into the wagon? A. Right.

Q. So then at no time did your feet touch the ground?

Q. And while they were lifting you into the wagon, did either your left foot, or your right foot, go below the waist of [114] Officer Miller and Officer Buchanan, in other words, did they put your feet down a little bit, down towards ground level? A. I don't recall, I remember Brazzoni was on my back lifting me backwards in the wagon, the other officers were on my feet, and that is the way I went in.

- Q. Did you, at any time, direct any statement toward Sgt. Miller at the wagon? A. I did not.
- Q. Sgt. Miller had a uniform on that night, is that correct, Father? A. Yes.
- Q. And it showed his sergeant stripes, isn't that correct?

 A. I believe so.
- Q. Normally, wouldn't you make any complaint that you might have, to the sergeant?

Mr. Jacobson: I don't understand that question, I don't think it is, you know, specific enough in terms of what you're talking about.

By Mr. Lauerman:

- Q. You testified Father, you told Officer Brazzoni, about certain goings on, as you were being carried to the wagon? A. I did not think about it, my foot was hurting from the gouging, I made the remark to Officer Brazzoni.
- Q. Did you refer to Officer Brazzoni by name? [115] A. No, I didn't know his name, at that time.
- Q. Well, did you turn your head backwards, so you were facing him? A. No, I don't recall doing that either, I said, he is gouging my foot with his fingers, into my foot.
- Q. Well then, how would you—why did you testify that it was Officer Brazzoni to whom you directed your comment? A. Because I felt I was talking to him, he talked to me earlier, don't worry Father, no one is going to hurt you, I thought I would take him up on his assurance.
- Q. Isn't it true, that what he said earlier to you was, he asked you to walk with him to the wagon? A. I don't think he said walk with me to the wagon, he said Father you're under arrest and he grabbed me behind the collar, and then there was some kind of a bump behind me, knocking,

he said, don't worry Father, no one is going to hurt you, according to his testimony, it was some Youth Council member.

Q. Didn't he say, come with me, nobody is going to hurt you? A. Yes, something like that, come with me Father, no one is going to hurt you, I thought, police officer, certainly the Youth Council member was not going to hurt me.

Q. But certainly, at that time, the understanding was that you would walk with Officer Brazzoni, isn't that correct? A. He did not say that I should walk with him.

[116] Q. And you can understand, can't you, if you do go limp, and people have to pick you up—

Mr. Jacobson: I am going to object to the form of your question.

By Mr. Lauerman:

Q. Isn't it correct, if you do go limp, and it is going to require several officers to pick you up, and it is going to be a little bit more difficult for things to be handled in a manner that you think—

Mr. Jacobson: I object, it calls for a conclusion. The Court: Answer if you can, if you can't answer it, you can't.

Mr. Jacobson: It's repetitious, all-

The Witness: I did not think of it at this time.

Mr. Lauerman: That's all. The Court: You're excused.

TERRY ASTUTO, called as a witness on behalf of the Defendant, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Jacobson:

Q. Would you state your name? A. Terry Astuto.

The Court: How do you spell that last name?
The Witness: Astuto, A-S-T-U-T-O (indicated spelling).

[117] By Mr. Jacobson:

Q. Where do you live Terry? A. 1527 North Marshall Street.

Q. Is that in the City and County of Milwaukee, State of Wisconsin? A. Yes, it is.

Q. Did you have occasion to be placed in police custody, on the night of August 31st, 1967, for violation of the Mayor's proclamation? A. Yes.

Q. And where were you placed in custody, when you were arrested for violating the Mayor's proclamation? A. On North Avenue, between 9th and 10th Street.

Q. Did you have occasion to be placed in some police conveyance, during the course of that evening? A. Yes.

Q. What kind of a conveyance were you placed in?

A. That—I think they call it a paddy wagon.

Q. Where was that paddy wagon located on that night?

A. It was on North Avenue, between 9th and 10th, a little bit east, of where I was arrested.

Q. Where were you in the paddy wagon, when you were placed inside of it? A. I was the last one, on the right side, in other words not the driver's side, in the back of the door.

[118] Q. Could you state, whether that paddy wagon had a number of occupants in there? A. Yes, it had very many

Q. Could you tell me, in terms of capacity, was it filled, half filled, or— A. It was more than full.

Q. And when you were in that paddy wagon, where you indicated you were placed, in that paddy wagon, did you have occasion—strike that—about what time of the evening was that, do you recall? A. It was approximately 7:30.

Q. 7:30, 8 o'clock? A. No, 7:30.

Q. Now you were present in the Courtroom, were you not, when police officers testified as to certain arrests that took place in the vicinity of 9th and 10th, on West North Avenue, for violation of the Mayor's proclamation? A. Yes, I was.

Q. Is that what you were in custody for? A. Yes.

Q. Inside the paddy wagon, did you have occasion to see Father Groppi at any time, while you were inside of the paddy wagon? A. Not until he was brought to the rear of the wagon.

Q. Did you have occasion to see him then? [119] A. Yes, I did.

Q. And could you describe exactly, when you first saw Father Groppi, what position was he in? A. He was being held by some officers.

Q. What were the officers doing with him? A. They were carrying him to the wagon.

Q. And you saw that? A. Yes.

Q. Did you see the officers carry Father Groppi to the paddy wagon? A. No.

Q. In other words did they— A. When he got to the rear of the wagon.

Q. The officers came around from the side of the paddy wagon? A. You see the doors had been closed before, then

when they opened, you could see Father out there, you couldn't see—we saw him coming towards us.

Q. When the doors were open, you did see Father Groppi? A. Yes.

Q. Was he in a horizontal position, were the officers holding Father Groppi in a horizontal position when you first saw him? A. Yes,

Q. And what happened after you saw him in that position? A. Well then, they brought him closer to the wagon, the officer [120] carrying the top part of the body, put his back up against the wagon, put it—that is just where it would have gone, some of us pulled him by the shoulders, and then he was just lifted into the wagon.

Q. And did you have—were there several officers carrying Father Groppi to the paddy wagon? A. Yes.

Q. Now when you were looking at Father Groppi being hoisted into the—or being lifted into the paddy wagon, did you have an occasion to get a good full view of Father Groppi, at that time? A. Yes, I was standing by that time.

Q. You heard the officers testimony in this Courtroom yesterday, did you not? A. Yes, I did.

Q. One of the officers testified, he was holding Father Groppi's left leg, at the time they got to the back of the paddy wagon, he kicked his leg loose, and he brought it back, and he kicked this particular officer in the chest, and that the officer went down on one leg, did you hear that testimony? A. Yes.

Q. Did you see anything like that happen? A. No, I didn't observe anything like that.

Q. Did you see Father Groppi kick any officer? [121] A. No, I didn't.

Q. You heard several officers testify as to some vulgarities that Father Groppi was to have uttered at the police

officer that had placed him in the paddy wagon? A. Yes, I heard.

- Q. Did you hear any such vulgarities? A. No, I didn't.
- Q. Did you hear any conversation between the officer and Father Groppi at all? A. Yes.
- Q. Would you state what that conversation was? A. The first thing, he was coming—or to the wagon, Father said, that man is gouging out my foot, the man is gouging out my foot, I want that man's badge number.
 - Q. You heard Father Groppi say that? A. Yes.
 - Q. Was that fairly loud, could you hear that? A. Yes.
- Q. And then did you hear any other conversation? A. Not until after he was placed in the wagon.
- Q. After Father Groppi was placed in the wagon, then what happened? A. Then the doors were closed, and Officer Brazzoni, I didn't know him then, he got on the back, and Father was looking out the window, and Officer Brazzoni said to him, what's [122] wrong Father, are you nervous, and Father said, that man was gouging out my foot, I want that man's badge number, what is his name, and the officer on the back said, that is for you to find out Father.
- Q. Did you see Father Groppi do anything else when he was placed in the paddy wagon? A. Yes, as soon as he got in, he took off his shoe, and pulled his sock down.
 - Q. And what? A. Pulled his sock down.
- Q. Did he say anything? A. Father said, look at that, that man was gouging my foot.
 - Q. Did you take a look? A. Yes, I did.
- Q. All right, at any time, that you had an opportunity to observe Father Groppi, from the time that he was brought to the paddy wagon, and the door was open, did you hear Father Groppi swear at anybody? A. No.

Q. And did you see him kick any officer? A. No.

Mr. Jacobson: That's all.

Cross Examination by Mr. Lauerman:

Q. Is it Miss or Mrs. Astuto? [123] A. Miss.

Q. You say you were one of the last ones, put into that paddy wagon? A. I was not one of the last ones, but I was the last one seated.

Q. The last one seated? A. Yes.

Q. Were several more placed after you? A. Yes, that's true, they were thrown to the back.

Q. Where was this seat that you say you were sitting on? A. Well, the only way I can describe it, I was on the side of the wagon, opposite of the driver's side, I was in the back, on the bench, the last one next to the door.

Q. And so, your back would be. A. My back would be,

have been facing south.

Q. It would be facing the side of the paddy wagon? A. That is true.

Q. And you were looking in the direction of the others?

A. If it had, had normal capacity, it was—I was tilted to the side, so my vision would have been more easterly.

Q. More towards the back of the wagon? A. Yes.

Q. Now was the door, did the door remain open during the—did the doors of the paddy wagon, the rear doors, remain open during the entire time the people were being [124] brought in? A. No, they were—the wagon was filled, and the doors were closed, and they opened, and they threw in one of the Commandoes, and they closed the doors, and another one—and then they opened them again, and the next person in, was Father Groppi.

Q. So you say the doors were closed prior to Father

Groppi being led to the back of the wagon? A. That is correct.

Q. And then they opened the doors just before Father Groppi was put in? A. When they opened the door, Father wasn't there yet, there were approximately 10 policemen, there could have been some one else, I just saw the policemen.

Q. Now was anyone standing in the wagon, between yourself and the rear door of the wagon, in other words, was anybody obstructing your view to the rear of that wagon, at all? A. No, they couldn't have, if they wanted to.

Q. Were a lot of people within the wagon saying things?

A. Yes, they were.

Q. Would you say there was a lot of noise coming from that wagon? A. There was noise, I wouldn't say—it wasn't a great noise, there was a noise.

Q. A lot of hubbub, lot of comments, and what not? [125] A. Well, mostly singing freedom songs.

Q. Do you have an estimate of about how many people were in that wagon? A. Well, an estimate would be, there might have been 15 or 16, I really don't know.

Q. Could have been more? A. I don't think it could have been more, it could have been a couple less, it seemed very full.

Q. And they were singing, some were looking out the windows, depends on what you did.

Q. Were you singing songs? A. No, I was not singing songs.

Q. What were you doing just prior to the time that you saw Father Groppi behind the wagon? A. I was looking out the window.

Q. Looking out the rear window? A. Yes, that was a little fence.

Q. When—after the doors were open and you saw Father Groppi coming, being carried behind the wagon, how many officers were carrying Father Groppi? A. I couldn't tell, there were too many.

Q. So there were several police officers standing behind the wagon? A. Yes.

[126] Q. Now, if you don't know how many officers were carrying Father Groppi, and if there were a lot of officers standing behind the wagon, then at certain times during which Father Groppi was behind the wagon, your view could have been obstructed, is that correct? A. No, it isn't.

Q. Then if your view wasn't obstructed, you would normally know, how many were carrying him, isn't that correct? A. I just didn't notice.

Q. You just didn't notice how many were carrying him?

A. That is correct, I knew one, by the top—what else was being done to him—but my view wasn't obstructed at all.

Q. Did Officer Brazzoni who was carrying the top part of his body, at any time, obstruct the view of the rest of Father Groppi? A. I am not sure, I wouldn't say he did.

Q. But you're not sure? A. I don't recall he did.

Q. But he could have obstructed your view of Father Groppi somewhat, at some part of that time, isn't that correct? A. He could have obstructed a little, they were carrying Father, however, they got Father to the wagon, so there were no police, Father's head was on the wagon, he couldn't have obstructed my view, in other words, he was over to [127] the side by that point.

Q. Now as they lifted Father Groppi up into the wagon, you got up to help? A. That is correct.

Q. And other people within that wagon came to help to lift him into the wagon also? A. That is correct.

Q. So we could safely say you were mainly interested in

helping him to get in—into the wagon at that point in time?

A. That is correct.

Q. So you were not really looking at, for instance, the police, and feet, as much as you were to get a good grip on the top part of his body, that Officer Brazzoni was lifting into the wagon? A. Well, I suppose you could say that, but I would have noticed anything unusual in motion.

Q. Now is it your testimony that he didn't twist at all?

A. There were body movements.

Q. There was kicking? A. I wouldn't call it-

Q. Well he was— A. His body was making movements, that is correct.

Q. But that is not— A. In other words I couldn't see any voluntary action on [128] Father's part, he wasn't moving, but his body was.

Q. You say that you would probably, normally, notice anything unusual? A. That is correct.

Q. You might not have? A. I think it would have been—it's kind of inconceivable to me not having noticed something.

Q. You think you would have? A. I—put it this way, I am morally certain I would have seen something.

Q. But here you're trying to get a grip on Father Groppi's shoulder, and what not, yet you could observe everything? A. I could, that was happening with Father.

Q. You think you could? A. I feel pretty morally certain I could have.

Q. Now, there was singing you said, coming from within the wagon? A. It stopped when they started bringing Father over.

Q. Were there any shouts coming from within the wagon, directed out of the wagon, as Father Groppi came up? A. Yes.

Q. There was quite a few, weren't there? A. There were a number, yes.

Q. And there was some loud ones, weren't there? A. I wouldn't—I mean shouts, I wouldn't say, any louder [129] than a normal shout.

Q. A shout? A. Right.

Q. And so, if Father Groppi—strike that—so if these shouts that were coming from within the wagon, and possibly you may—would not have heard all the things, the things that Father Groppi said? A. It would have been physically impossible to have heard what Father said at that particular moment.

Q. With all the shouts? A. That is true, that is correct.

Q. And was there commotion just outside the door of the wagon? A. There was not too much, only police officers there.

Q. Were any of the police officers speaking? A. I didn't notice that, I don't imagine they were keeping perfectly—I didn't notice any noise coming from them.

Q. You didn't notice whether they were talking? A. No, I didn't.

Q. Did you notice what they were doing? A. Most of them were—well most of them were trying to get Father into the wagon, and they were just around, I don't—

Q. By most of them, how many did you observe? A. Still approximately 10 that I—approximately 10 that were there, you see when they opened the wagon doors, [130] they were suppose to keep us in—I don't know—then they brought Father.

Q. You don't know whether they were saying anything?

A. Well, I didn't think about it.

Q. You didn't think they were saying anything? A. That is correct.

Charles R. Morgan-for Defendant-Direct

Q. So you didn't hear the officers saying anything, and there were shouts coming from within the wagon, and yet it's your testimony, you are sure that you heard every single word that Father Groppi said? A. I am positive, every single word.

Mr. Lauerman: That's all.

CHARLES R. MORGAN, called as a witness on behalf of the defendant, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Jacobson:

- Q. State your name? A. Charles R. Morgan.
- Q. And where do you reside, Mr. Morgan? A. Whitefish Bay, Wisconsin.
 - Q. And you're employed at the present time? A. I am.
- Q. Where are you employed? [131] A. I am a reporter for the Milwaukee Journal.
- Q. For how long have you been employed for the Milwaukee Journal? A. Since, January 20th, 1964.
- Q. And were you so employed on August 31st, 1967? A. I was.
- Q. And during the course of your employment, did you have an assignment that evening? A. I did.
- Q. And where was that assignment? A. To cover the open housing demonstrations.
- Q. And did you in fact, cover the open housing demonstration that evening? A. I did.
- Q. Were you present at St. Boniface Church, or the area where this open housing march, or demonstration occured on that evening? A. I was.

Charles R. Morgan-for Defendant-Direct

Q. Did you have occasion to walk along with the marchers as they left St. Boniface Church and proceeded in the route they were traveling that evening? A. I did.

Q. Were you in the vicinity of 9th and 10th on West North

Avenue, during that evening? A. I was.

[132] Q. And were you present when certain arrests were made that evening for violation of the Mayor's proclamation? A. I was.

Q. Did you have occasion to see Father Groppi during that period of time? A. Yes.

Q. When was the first time you saw him? A. When he left St. Boniface Church.

Q. Between 9th and 10th, on West North Avenue, did you have occasion to—strike that—when is the first time you saw him? A. In the line of march, when a police officer seized him.

Q. Could you describe to the jury what happened when this police officer placed him under arrest? A. Father Groppi was walking in, I would say about 6th or 7th back, in the line of march, the officers were ordered to make arrests, they entered the line of march, they seized Father Groppi, and others, many of the marchers—

Q. Just stop there, now after they had Father Groppi in custody, what did they do with Father Groppi? A. My attention at that point, was distracted by other incidents.

Q. Then did you have occasion to see Father Groppi again? A. I did.

Q. What did you see at that time! [133] A. The next occasion I saw Father Groppi, when he was standing in this center of the street, with several other officers.

Q. And what occurred at that time? A. Father Groppi went limp.

Q. Would you describe what you saw when he went limp?

Charles R. Morgan-for Defendant-Cross

A. He relaxed his body, and the officers around him, three, if I recall correctly, picked him up.

Q. Did Father Groppi sit on the street? A. He did not.

Q. In other words, as he went limp he fell into the officers arms, and he picked him up? A. That is correct.

Q. Did you have occasion to see what the officers did with Father Groppi? A. They carried him bodily toward the patrol wagon.

Q. All right, then what happened? A. My attention at this time was distracted.

Q. All right, did you have occasion to see Father Groppi subsequent to that time? A. I did.

Q. And when was that? A. At the very moment he was being hoisted into the paddy wagon.

Q. You did see that? A. Yes.

[134] Q. And did you hear, did you hear Father Groppi hurling any vulgarities, or did you hear him utter, any vulgarities, at that time? A. At no time when I was in the vicinity, did I hear him use any profanity.

Mr. Jacobson: That's all.

Cross Examination by Mr. Lauerman:

Q. Now, Mr. Morgan let's get to the time when you saw Father Groppi being hoisted into the patrol—or the paddy wagon, about how far were you, when you observed this taking place? A. At the time he was being hoisted in the paddy wagon, I was standing on the sidewalk, which I estimate is 15 to 20 feet from where the paddy wagon was parked.

Q. Could you, would it be fair to say, there was a lot of commotion at the rear of that paddy wagon, and noise coming from within the paddy wagon? A. There was commotion throughout the area.

Charles R. Morgan—for Defendant—Redirect Michael S. Crivello—for Defendant—Direct

Q. So, Father Groppi could have said things that you couldn't have heard? A. He could have.

Mr. Lauerman: That's all.

Redirect Examination by Mr. Jacobson:

[135] Q. Are you a member of the NAACP? A. I am not.

Q. Were you placed under arrest for any-

Mr. Lauerman: I object, immaterial. The Court: Overruled, you may answer. The Witness: I was not.

By Mr. Jacobson:

Q. You were strictly there as a Milwaukee Journal Reporter? A. That is correct.

Mr. Jacobson: All right, that is all.

MICHAEL S. CRIVELLO, called as a witness on behalf of the defendant, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Jacobson:

- Q. State your name? A. Mike Crivello.
- Q. Where do you reside? A. 4680 North 51st Boulevard.
- Q. Is that in the City and County of Milwaukee? A. Yes.
- Q. Are you employed at the present time? A. Yes, I am.
- Q. Where are you employed? [136] A. Chief Photographer, WISN, TV 12.

Michael S. Crivello-for Defendant-Direct

- Q. Were you so employed on August 31st, 1967? A. Yes, I was.
- Q. Are you testifying here, under subpoena? A. Yes, I am.
- Q. Now did you have an assignment on the evening of August 31st, 1967, in regard to the duties you performed for your television station? A. Yes, I did.
- Q. What was that assignment? A. To cover the demonstrations.
 - Q. What demonstrations? A. At St. Boniface.
- Q. Did you so cover the demonstrations on the evening in question? A. Yes, I did.
- Q. Did you have occasion to be present in the vicinity of 9th and 10th, on West North Avenue, on the evening of August 31st, 1967? A. Yes.
 - Q. Did you see Father Groppi at any time? A. Yes, I did.
- Q. Tell the jury, the circumstances when you saw Father Groppi? A. The first time I saw Father Groppi was on 9th and 10th.
- Q. In that area between 9 and 10th on West North Avenue? [137] A. I had a sound camera on my shoulder, and when I—the first time I saw him, had any occasion to look for him, I heard some noise, and I looked in the general direction of the noise, and I could see that someone was being arrested, looked like, that is a conclusion on my part, looked like somebody was being arrested, I ran to the area that Father Groppi had been taken into custody, that is the first time.
- Q. Did you have occasion to see him again after that? A. Yes, I followed, I believe we turned east and I had the camera on him, then we turned west, and I lost him.
- Q. When you say you followed him, could you describe under what circumstances Father Groppi was in, at that

Michael S. Crivello-for Defendant-Direct

time? A. The first time I saw Father Groppi, he was walking, and the next time, he was being carried, I did not see—

Q. By several police officers? A. I can't even recall by how many.

Q. But he was being carried by some police officers?

A. Yes, he was.

Q. Go ahead, what happened after you lost contact, did you have occasion to see him again? A. Yes I—I lost contact two or three times, he would go one way, turn around, you couldn't follow, I picked a spot at the paddy wagon, about 15 feet away, I organized myself, they brought Father Groppi around, and placed him in the [138] paddy wagon.

Q. You did have occasion to see that? A. Yes, I did.

Q. Did you see him, trying to, or kick any police officer at that time? A. No, I didn't.

Q. Did you hear him shout any vulgarities? A. I heard a lot of noise I couldn't—difficult whether any vulgarities or not.

Q. From Father Groppi? A. I wouldn't say from Father Groppi, there was a crowd there.

Q. Were you in a position to see Father Groppi when he was being placed in the paddy wagon? A. I saw nine, ten percent of it.

Q. You didn't see him kick any police officer in the chest?

A. I wasn't looking necessarily in that direction.

Q. Did you see him kick any police officer in the chest, when you were, looking in that direction? A. No, I didn't.

Q. Did you finish your assignment that evening? A. No, I didn't.

Q. What happened? A. I was struck by something, or someone.

Q. What manner? [139] A. Pardon me?

Michael S. Crivello-for Defendant-Cross

Q. What manner? A. I received some injuries to my stomach and head, my camera, I don't know—pushed, or I hit it with my knee, and it hit me in the head, and I was unconscious for about five minutes.

Mr. Jacobson: That's all.

Cross-Examination by Mr. Lauerman:

Q. Mr. Crivello, I believe it is your testimony that when you did come behind the paddy wagon, you stationed yourself about 15 feet away? A. Yes, I did.

Q. You said you heard a lot of commotion, lot of noise coming from the direction of the paddy wagon, is that correct? A. That is correct.

Q. Did you hear any vulgar words used? A. I heard some, yes, but they were said from behind me.

Q. They were from behind you, not necessarily coming from the paddy wagon? A. I couldn't say, but I would think they were behind me.

Q. But from your position, and because of the noise and the commotion, would it be safe to say, you wouldn't have heard a lot of things that Father Groppi might have said? [140] A. That is true.

Q. And there were several police officers in the immediate vicinity of the back door of the paddy wagon, is that correct? A. That is correct.

Q. In fact two of them as they carried Father Groppi to the back of the paddy wagon, had him by his legs, is that correct? A. I really don't know, I was looking in all directions, I usually point the camera in the direction of the activity and look around, I didn't even—to tell you the truth, I didn't see that much of it.

Q. I see, so then we are safe to say, you may have missed

Michael S. Crivello-for Defendant-Cross

a lot of the action behind the paddy wagon? A. That is correct.

Mr. Lauerman: That's all.

Mr. Jacobson: Could we release Mr. Morgan and Mr. Crivello from under the subpoena?

The Court: All right. We will take a short fiveminute recess, for the benefit of the ladies and gentlemen of the jury.

(Thereupon a recess was taken.)

(Court reconvened.)

(Jury Present.)

Mr. Lauerman: I would like Your Honor, at this time [141] the question and answer that was objected to, reread, in the—in Father Groppi's direct examination, the question of his Counsel, Mr. Jacobson, concerning what was discussed at an assembly on August 31st, 1967, at approximately 7 p.m., the objection is on the answer that was given.

Mr. Jacobson: I object to that being reread, Your Honor.

The Court: I overrule the objection, let the testimony be reread.

(Reporter reread back answer.)

Mr. Lauerman: I would renew my objection at this time, Your Honor, and ask that the answer be stricken.

The Court: I overrule the objection, let the answer stand, as read originally, and reread.

Prentice L. McKinney-for Defendant-Direct

PRENTICE L. McKinney, called as a witness on behalf of the defendant, being first duly sworn, on oath testified as follows:

Direct Examination by Mr. Jacobson:

Q. State your name? A. Prentice McKinney.

Q. Where do you reside at the present time? A. 3256 North 10th.

[142] The Court: How old are you? The Witness: 20.

By Mr. Jacobson:

Q. Is that in the City and County of Milwaukee, State of Wisconsin? A. Yes, it is.

Q. Did you have occasion to take part in a demonstration, on the evening of August 31st, 1967? A. Yes, I did.

Q. Was that—were you in the Courtroom yesterday, when certain officers testified in this case? A. Yes, I was.

Q. During the whole testimony? A. Yes.

Q. Did you hear those officers testify that persons that were taking part in this demonstration on the night in question, were later arrested for violating the Mayor's proclamation? A. Yes.

Q. Were you one of those persons? A. Yes, I was.

Q. Did you have occasion that night, to be placed in a paddy wagon? A. Yes.

Q. Where was that located? A. I don't know, in between 9th and 10th on North Avenue.

Q. And where in that paddy wagon were you placed? [143] A. I was by the door, and my back was to the north side of it.

Q. Which way would you be facing? A. I would be facing south, or towards the door.

Prentice L. McKinney-for Defendant-Direct

- Q. Which door is that? A. The back door, behind the driver.
- Q. Did you have occasion, when you were in the paddy wagon that evening, where you were in this regard, to the position that you just testified to, did you have occasion to see Father Groppi? A. Yes.
- Q. When was the first time you saw Father Groppi, when you were in the paddy wagon? A. He was being put in, they pushed up his back, and he was put in, he was still hollering about his leg.
- Q. You saw him when he was outside the door of the paddy wagon? A. Right.
- Q. And what did you see, when you saw him at that time?

 A. One Officer had him by the back, and one on each foot.
 - Q. You saw that? A. Yes.
- Q. Did you have occasion to—what happened when you saw that? A. Well, they were bringing him into the wagon.
- Q. Go ahead, describe what happened? A. Well, the officer that had his back, just came around and [144] lifted his back up, you know, to push him into the wagon.
- Q. And then, was he in fact placed in the wagon? A. We helped him a little bit.
 - Q. You helped him too? A. Yes.
- Q. Did you have occasion to hear any conversation between Father Groppi and the police officers? A. I wasn't between—Father was just telling this other officer to make this—this other officer quit gouging his leg.
 - Q. Did you hear him say that? A. Yes.
 - Q. Did you hear any—that is what you heard? A. Right.
- Q. Did you hear anything else? A. No, he didn't say anything else.
- Q. Did you see Father Groppi kick a police officer in the chest? A. No, he didn't kick anybody, he—

Prentice L. McKinney-for Defendant-Cross

Q. Did you see him kick anybody? A. No, he didn't kick anybody.

Q. Did you hear him use any vulgar language at the time he was being placed into the paddy wagon? A. No.

[145] Q. Did you see—hear any vulgar language at any time when he was in the paddy wagon? A. Only—make them quit gouging my leg.

Mr. Jacobson: That's all

Cross Examination by Mr. Lauerman:

Q. You were in the paddy wagon, is that correct? A. Yes.

Q. You were towards the rear, towards the door? A. I was right next to the door.

Q. Were you one of the last ones? A. Well, I imagine so, because the paddy wagon was full.

Q. Do you remember other people being placed in after you, prior to Father Groppi being placed in? A. No, I don't, just about the last.

Q. So the best of your memory, you were the last, prior to Father Groppi being put in? A. Right.

Q. Were you sitting down? A. I was standing up.

Q. Now, you were facing south? A. I had my back to the north wall, I was on an angle, because I was standing in the door.

Q. I just want to make sure this is clear, now you said you were facing south? [146] A. Right, on an angle like this, the wall was back here, and the door was here.

Q. So then you were facing more southwest? A. Right, say southwest.

Q. Was there noise coming from that wagon? A. Λ few freedom songs, so—or so on.

Q. Shouts coming from the- A. Shouts, not necessarily,

Prentice L. McKinney-for Defendant-Cross

there—I said just people saying get off my feet—jammed in like sardines.

Q. You wouldn't describe the voices as shouting? A. No, not necessarily shouts, they weren't whispering either.

Q. Did you hear anybody direct any words towards any officer? A. I wasn't really even noticing, I—

Q. Did you direct any words towards any officer, when

they opened the door! A. No.

Q. Were you saying anything, were you talking? A. I was singing.

Q. You were singing? A. Yes.

Q. Did you stop singing when Father Groppi was brought to the rear of the wagon? A. Yes, I did.

Q. At what point, as he was being lifted up? A. When I first saw him.

[147] Q. When you first saw him? A. Right.

Q. Prior to him being lifted up? A. Yes.

Q. What were the exact words, as you remember them, that Father Groppi said? A. I am not going to say this is exact, or not exact, I heard something like, stop the officer he is gouging my leg, please, please, stop him.

Q. That is all you heard? A. Right, he was begging the man for mercy.

Q. You're sure that is all the words you heard him say?

A. Right.

Q. So then, you didn't hear him say anything about badge numbers? A. No, I didn't really pay any attention, he was saying the man was hurting him, I was interested in that.

Q. So then you didn't hear all the words that Father Groppi spoke? A. Not necessarily—

Q. Just answer the question, you didn't hear all the words? A. I heard them, but they didn't all register.

Q. So you don't remember all the words that Father Groppi spoke? A. Look, I told you—

Prentice L. McKinney-for Defendant-Cross

Q. Answer that question. [148] A. No I don't remember a' the words he spoke, I don't—he didn't use any vulgar—

Q. That is not answering— A. The—each individual word—

Q. There was a lot of commotion going on outside the door of the patrol wagon, also when the door was open, is that correct? A. I don't think there was that much.

Q. How many police officers were out there, as you remember? A. I don't know, about five, or six.

Q. You say five or six, and one of them, a rather large officer had Father Groppi by the trunk, the upper trunk? A. Yes.

Q. And he lifted him up, and two more had him by the legs? A. Right.

Q. One on each leg? A. Right.

Q. Isn't it possible that for a period, of some seconds, perhaps you would have been obstructed in your complete view of what was going on? A. No.

Q. You never— A. Because I was right over his right shoulder.

Q. You say you grabbed Father Groppi? A. Right.

Q. Where did you grab him? [149] A. Up under his right shoulder.

Q. Was that—was his right shoulder area free for you to grab? A. Right.

Q. And you looked at the shoulder area? A. I didn't even—was I—was I looking at the man, he was still hollering about the man what was holding his leg.

Q. Do you think—strike that—did you see anything else going on, within the immediate area of the back of the paddy wagon, as Father Groppi was being placed into the paddy wagon? A. I wasn't watching.

Q. You weren't watching? A. I was watching him, and the three officers.

Prentice L. McKinney-for Defendant-Redirect

Q. Mr. McKinney, have you ever been arrested, and convicted of a criminal offense? A. Let's see, I have, I don't know, maybe once.

Q. Do you know, or don't you know? A. I don't know what you call a criminal offense.

Q. A misdemeanor, felony? A. Well, a misdemeanor.

Q. How many times? A. About three, four times, something like that, like arguing with my girlfriend's mother, and stuff like that.

Q. More than just that? [150] A. What do you mean, by more?

Q. It entailed more? A. No, just argument, disorderly conduct, argument.

Q. All right, Mr. McKinney, I just want you to be very honest, and search your memory, to the best of your recollection— A. Yes.

Q. How many times, we don't know what you were ever convicted of, if you were, about how many times have you been convicted of a criminal offense? A. I really don't know.

Mr. Lauerman: You don't know.

Mr. Jacobson: How many times Prentice, how many times, tell the jury to the best of your recollection, more than four or five, tell them exactly.

The Witness: It's more an four or five, it's more an four or five.

Redirect Exemination by Mr. Jacobson:

Q. Are you working at the present time? A. Yes.

Q. Where are you working? A. Wisconsin State Employment, and University of Wisconsin.

Q. All right, just tell the jury exactly what your background is, you don't have to keep saying four or five times, just say— [151] A. That is what I said.

Michael D. Cullen-for Defendant-Direct

Mr. Jacobson: All right, that is all.

The Court: You're excused.

MICHAEL D. CULLEN, called as a witness on behalf of the defendant, being first duly sworn, on oath testified as follows .

Direct Examination by Mr. Jacobson:

Q. State your name? A. Michael D. Cullen,

Q. Where do you reside? A. 1131 North 21st Street.

Q. That is in the City and County of Milwaukee, State of Wisconsin? A. Yes.

The Court: How old are you?

The Witness: I am 26. The Court: All right.

By Mr. Jacobson:

Q. Now Mike, what do you do? A. I am Director of Casamarraa Refuge House, gives community shelter, it is an association for the community, we live on 21st and Juneau, I also am a teacher at the Employment Service for Project CITE, Community Involvement, Towards Employment, at the Wisconsin State Employment Service.

[152] Q. Now Mike, did you have occasion to be present at St. Boniface Church on the night of August 31st, 1967? A.

Q. Did you-did you take part in a demonstration that evening? A. Yes, I did.

Q. Were you later placed in police custody, for the violation of the Mayor's proclamation? A. Yes, I was.

Q. Where did that take place? A. I was in the line, which was going east on North Avenue, between 9th and

Michael D. Cullen-for Defendant-Direct

10th Street, if I remember properly, and I was about, oh, I would say 30 feet from the beginning of the line, which was headed by Father Groppi, and Commandoes, and other people, when the arrest, when arrests took place, they arrested the beginning of the line, and a number of us in the middle, we came in, and I was arrested with a large group, not as an individual, but as a group, to the paddy wagon.

Q. All right, a number of you were taken to a paddy wagon? A. Yes, which was facing east, which was facing

east on North Avenue.

Q. Were you—were you in close vicinity of this particular paddy wagon, as you were in police custody? A. It was in a little more to the south side of the street, [153] but it was even to the center.

Q. And you were actually taken by the police, to a paddy wagon? A. Yes, with a group of people, mostly of whom

were white.

Q. All right, were you ever placed in the paddy wagon? A. I was brought to the side of the paddy wagon, this is important, exactly what happened, I was brought to the side of the paddy wagon, with a number of people, and it was during this time that Father Groppi was carried by, and I am trying to recollect, it was four policemen as far as I could see in the beginning, if you can think, the paddy wagon was facing east, he had to come around front of the paddy wagon, in order to get to the rear, we were on the side, and when the other policemen saw Father Groppi coming, there was much excitement, a lot rushed towards him, to put him into the paddy wagon.

Q. Now, when you saw Father Groppi for the first time, he was in the front of the paddy wagon? A. Yes, the front

towards the engine.

Q. He was being carried by police officers? [154] A. When

Michael D. Cullen-for Defendant-Direct

he was being carried by me, he was limp, very limp, you see, they had to pass by me.

Q. Just answer my questions. A. Okay.

- Q. He was being carried by some police officers? A. Yes.
 - Q. You were able to see this? A. Yes.

Q. Did you see these police officers carry Father Groppi

to the back of the paddy wagon? A. Yes.

Q. And did you then see the police officers also lift Father Groppi up into the paddy wagon itself? A. The wagon itself-the door sort of hemmed some of us out, the door had to be opened sideways, and as he went around the paddy wagon, I didn't exactly-put right in the paddy wagon, but it was on the way, remember coming around by the door.

Q. Were you in the back- A. I-

- Q. Were you in the back of the paddy wagon? A. Yes, more to the side, than to the back.
- Q. Were you in a position to see Father Groppi as he was being carried, and being placed in the paddy wagon? A. Yes.

Q. You were in a position to see that? A. Yes.

Q. All right, at any time that you saw Father Groppi, as he was being carried to the back of the paddy wagon, and being placed in the paddy wagon, did you see him kick

any police [155] officer? A. No, I did not.

Q. Did you hear him say anything? A. No, there was no-this is very hard, I have been trying to think back very deeply on this, is that-one of the things that seemed to have happened, was that he did have a foot that was shaking, I didn't see him kick anybody, and he said, my leg, my leg, and that is all I could hear, it was so very vague, very vague.

Q. Did you hear him use any- A. No profanity, no

profane language, I am positive of that.

Michael D. Cullen-for Defendant-Cross

Q. Were you then placed in the paddy wagon yourself? A. No, I was not, in fact it was such a hustle, that Father Groppi—the doors were slammed, and we were left, I don't know how many was left on the sidewalk, but a number were left on the sidealk, we were not arrested that night, we were arrested, but we weren't placed in the paddy wagon, so we went free.

Q. You were never charged with the violation of the Mayor's proclamation? A. No, I was not.

Mr. Jacobson: That's all.

Cross Examination by Mr. Lauerman:

Q. You said you were on the side of the paddy wagon, as [156] Father Groppi was brought around? A. Side, more to the rear, we were on the sidewalk, part of the sidewalk, not on the sidewalk.

Q. Now, you also testified that you saw him as he was being carried, and you saw him at a point where he would have been near the front of the paddy wagon? A. I was more to the rear, to the side.

Q. When did you first see him? A. I could see him coming all the way down.

Q. How far away from the paddy wagon, were you? A. I was right beside—they passed right—a policeman between me and him, a point between the body, I was probably the closest person to him.

Q. So you were standing right beside the paddy wagon?

A. Yes.

Q. When he was brought around the rear of the paddy wagon, didn't the doors obstruct your view? A. It obstructed the view, in the last minute, when he was—

Q. These doors as they open, they swing around the paddy wagon? A. But there were, well—

Michael D. Cullen-for Defendant-Redirect

Q. Don't they? A. Okay, yes.

Q. About how wide are these doors? A. Oh, let me see, two and a half feet, three, each door.

[157] Q. And if you were standing right beside, then as the paddy wagon door swings around the paddy wagon, that would fairly well obstruct your view? A. It would obstruct, definitely, some of it.

Q. So after that door swung open, your view was quite well obstructed? A. For a time.

Q. So there was a period of time then, that you would probably not even been able to see Father Groppi? A. No, I saw him totally, they had to get by the doors.

Q. No, I mean after they walked around the door, there

was a time you didn't see him? A. Yes, right.

Q. You also testified there was much excitement at the paddy wagon, as they were carrying Father Groppi? A. Very much so.

Q. Was there a lot of commotion? A. But I was very much concentrated on Father Groppi.

Q. But there was a lot of commotion? A. Yes.

Q. Also some noise back there? A. There was noise, absolutely.

Q. So it would be safe to say, you may have missed a few words that any one individual would be speaking, at the rear of that wagon, is that correct? [158] A. Very, very possible.

Mr. Lauerman: That's all.

Redirect Examination by Mr. Jacobson:

Q. As a matter of fact, you didn't hear Father Groppi say any profanity at all? A. Absolutely not.

Mr. Jacobson: Defense rests.

Armando Brazzoni-for Plaintiff-Direct

Mr. Lauerman: I'd like about two minutes, Your Honor.

Armando Brazzoni, recalled as a witness on behalf of the State of Wisconsin, being previously sworn, on oath testified as follows:

Direct Examination by Mr. Lauerman:

Q. Officer Brazzoni, you have previously testified in this trial, is that correct? A. That is correct.

Q. And your testimony was, that you helped Father

Groppi to the paddy wagon? A. That is right.

Q. As you neared the paddy wagon, state whether or not—state whether or not you were asked by Father Groppi any questions, or did he make any statement, as you were going around the paddy wagon? [159] A. The only statement he made, was that he wanted that man's badge number.

Q. At what point did that happen? A. This was just

as he was entering, being placed in the wagon.

Q. Is that the first statement you heard him make? A. Yes.

Q. State whether or not where was any noise coming from the paddy wagon? A. When was this, after?

Q. As he was behind it? A. Oh yes, definitely.

Q. Was there quite a bit of noise? A. Yes, quite a bit, chanting, name calling.

Q. Did this occur up through the point where he was successfully placed in the paddy wagon? A. Yes.

Mr. Lauerman: That's all.

Mr. Jacobson: We ask this line of questioning be stricken, on the basis, the jury heard all the testi-

Wilfred Buchanan-for Plaintiff-Direct

mony before, and the latter part, of the material part of the testimony.

The Court: Let the questions and answers stand, let the jury weigh it one way or the other.

[160] WILFRED BUCHANAN, recalled as a witness on behalf of the State of Wisconsin, being previously sworn, on oath testified as follows:

Direct Examination by Mr. Lauerman:

Q. Officer Buchanan, you have testified in this trial previously? A. Yes, I have.

Q. And you have testified that you were one of the officers who was aiding in carrying Father Groppi to the paddy wagon? A. Yes.

Q. And what grip did you have on Father Groppi? A. I had my both hands around his lower part of his leg, or ankle, and in it, I also had my club, my night stick.

Q. State whether or not at any time, you pushed your fingers into his ankle? A. No, I didn't.

Mr. Jacobson: Your Honor, I am going to object, it is totally self-serving, it is repetitious, we heard this all—

The Court: Let the questions and answers stand, let the jury weigh it one way or the other.

Mr. Lauerman: That's all. Mr. Jacobson: No questions.

[161] Mr. Lauerman: State rests.

Mr. Jacobson: Defense rests.

(Jury excused.)

The Court: First of all, I will ask are there any

Colloquy

request for the instructions either side wishes to make a matter of record, then after that, we will entertain the motions, and then have the closing arguments to the jury.

Mr. Jacobson: Well we have one request on instructions, on what the offense the jury is to be charged with.

The Court: Have you— Mr. Jacobson: It's right—

The Court: Let me see it please. I will deny this exact instruction to the jury, because I am going to give an instruction to the jury that is similar to this, at the same time somewhat different, and not in these same words, but your instruction will be made a matter of the record, any other request?

Mr. Lauerman: Only that the standard be read to the jury, Your Honor.

The Court: Any motions on either side, in the absence of the jury, or without the absence of the jury?

Mr. Lauerman: State would have one motion, to renew an objection, but would like that done in the presence [162] of the jury, wherein the Reporter can read back the testimony before the jury.

Mr. Jacobson: Defense objects to that being done at this time.

The Court: I will allow it, and overrule your objection. Do you have any motions you would like to make.

Mr. Jacobson: Well we will, after they make their motion.

(Jury Present)

Colloquy

The Court: Anticipating we will run through until 1 o'clock, with the closing arguments and my instructions to the jury, for those of you sitting in the audience, it will be at least 1 o'clock. All right, any other motions now, before the closing arguments?

Mr. Lauerman: State does have one motion Your Honor, and would like the Reporter to read the initial direct examination of Father Groppi, when he was testifying in this case, and more particularly, the point at which Father Groppi testified that he, and several other people were discussing the march.

The Court: Mr. Reporter, will you read that portion back.

(Question and answer read back).

Mr. Lauerman: State would renew its objection [163] to that testimony as being immaterial, and ask that it be stricken.

Mr. Jacobson: Defendant's position Your Honor, the introduction of the Mayor's proclamation into evidence at the request of the State, was objectionable, and therefore, there will be a renewal of the objection to having received that proclamation into evidence.

The Court: I will overrule the objection, as I did previously, and let the question and answer stand. Now ladies and gentlemen of the jury, the State has presented its case to you and rested, the defense has presented its case to you, and rested. I would like to tell you at this time, what the Assistant District Attorney, and the Defense Counsel said at the opening of this trial, what they, would prove to you is not necessarily evidence in this case. Now we arrive where they have their closing arguments to you. and I wish to tell you, that what they, did prove, is not actually evidence in this case. The innocence or guilt of this defendant, is determined by two things, one, by the testimony of the witnesses for both sides, on the witness stand, and then at the conclusion of these closing arguments, my instructions to you on the law in this case. The testimony of the witnesses, on both sides and my instructions to you on the law, and those two things alone, do you determine the innocence or guilt of this defendant.

[164] The Court: To these instructions now. I indicated to you previously, that what the Counsels said at the beginning of the trial, and what they said at the conclusion of the trial, is not evidence in this case. The innocence or guilt of this defendant is determined by the testimony of the witnesses on the witness stand for both sides, and apply that testimony, to the instructions to the jury, and the law that I will read to you at this time, and upon these two things alone, you determine the innocence or guilt of this defendant. Ladies and Gentlemen of the jury; at the close of arguments of Counsels in this case, it is the duty of the Court to instruct you upon the principles of law that should guide and govern you in your considerations of the evidence, and in reaching your verdict. It is the duty of you, members of the jury to take the law as

given in this instruction, and apply that law to the facts in this case, which are properly proven by the evidence. and therefrom, arrive at your verdict. It is your duty to exclude from consideration everything but the evidence received on this trial, and the law as given to you, in these instructions, and from these alone, guided by your soundest reason, and best judgment, reach your verdict. The complaint in this case, charges that State of Wisconsin, Plaintiff, against James Edmund Groppi, Case Number 2-63208, County Court, [165] Misdemeanor Branch, Complaint for Resisting an Officer, in the State of Wisconsin, through the Sheriff, Constable, or any police officer of the City of Milwaukee, "whereas, Wilfred Buchanan, being first duly sworn on oath, states to the Honorable John J. Kinney, as Magistrate, that James Edmund Groppi, the above named defendant, on the 31st day of August, 1967, in the County of Milwaukee, Wisconsin, did unlawfully, knowingly, resist Wilfred Buchanan, a duly appointed and qualified and acting police officer, of the City of Milwaukee in said County, while the said Wilfred Buchanan was then and there engaged in doing an act, in his official capacity, and with lawful authority, to-wit: said Wilfred Buchanan, personally observed said defendant resist Buchanan, at 900 West North Avenue, in the City of Milwaukee, in said County, to-wit: while said defendant was being carried to a police wagon, after being placed under arrest, said defendant began kicking his legs, striking said Officer Wilfred Buchanan in the body with his foot, that said defendant then states to said Wilfred Buchanan, "you fuckin' son-of-a-bitch, I want your number." "Contrary to Section 946.41 of the Statutes, and against peace and dignity of the State of Wisconsin, and prays that the said James Edmund Groppi, may be arrested and dealt with

according to law, signed Wilfred Buchanan, complainant." To this charge the defendant has pleaded not guilty.

[166] The Court: Although there has been testimony concerning the Mayor's proclamation and the arrest thereto, the only charge on which the defendant is before this Court, is resisting an officer, and his innocence or guilt should be solely determined on that singular charge alone. The Statutes of this State provide, 946.41, "Resisting or obstructing an officer, paragraph 1, whoever knowingly resists or obstructs an officer, while such officer is doing any act in his official capacity, and with lawful authority, may beparagraph 2, in this Section subparagraph a. "Officer", means peace officer, or other public employee, having the authority by virtue of his office, to take another into custody." Reading that Statute where it says, resisting or obstructing, the singular, is resisting an officer, resisting an officer as defined in Section 946.41, provides that, "whoever knowingly resist or obstructs an officer while such officer is doing any act in his official capacity and with lawful authority is guilty of a violation of the Statutes". Before the defendant may be found guilty of the offense of resisting the officer, the State must prove, by evidence, which satisfies you beyond a reasonable doubt, that there were following, the following three elements of this offense. First, that the defendant resisted an officer, two, that the officer was doing an act in his official capacity and [167] with lawful authority, three, that the defendant resisted the officer knowingly, that is, the defendant knew or believed that he was resisting the officer, while the officer was acting in his official capacity, and with lawful authority. To resist a peace officer, or police officer, directly, and while he was engaged in a lawful doing of an act, possibly means the resistance directed to the officer personally. The word, knowingly, worth belief that a special fact ex-

isted. The second element of this offense; that the officer was doing his act in a official capacity and with lawful authority. If you find therefore, beyond a reasonable doubt, that the officer was then in his official act, serving in his official capacity and with lawful authority. The third offense of this-the third element; that the defendant acted knowingly, before you may find that the defendant acted knowingly, knew or believed that the person resisted, was an officer, that the officer was acting in his official capacity, and that the course of conduct would indicate resistance. in the performance of his duties, and that his conduct was resisting the officer, if you are satisfied beyond a reasonable doubt, from the evidence in this case that the defendant knowingly resisted an officer, and that the officer was doing an act in his official capacity, and with lawful authority, then you may find the defendant guilty of the [168] offense of resisting an officer as charged, if you however are not satisfied, then you must find the defendant not guilty of resisting an officer. You are the sole judges of the credibility of the several witnesses, in determining the convincing power of the evidence, and in deciding questions of fact, and in determining the credibility to be given to the different witnesses. You should take into consideration all of the evidence, the character and appearance of the witnesses, the knowledge, sources, and means of information of the several witnesses, their candor, or lack of candor, and the bias, or lack of bias, or interest manifested by them. You have the right to consider the manner of testifying while a witness is upon the witness stand, and the probability of the truth of the matters testified to, when taken in connection with all of the evidence and surrounding circumstances, and you will consider all of the facts and circumstances, as they have been produced upon the

trial, and determine the convincing power of the evidence accordingly. If you believe that any witness has willfully testified falsely to any material fact in this case, you may on that ground alone, if you see fit, disregard the testimony of such witness as to all other matters, except insofar, as it is corroborated by other credible evidence produced upon the trial, or by facts and circumstances, which may be [169] fairly inferred. Under the law a defendant is a competent witness in his own behalf, the defendant James Edmund Groppi has given his testimony, and you are the judges of the weight which ought to be attached to it, he is directly interested in the result of the trial, in determining the weight to be given to the testimony of the defendant, it is proper for you to take such interest into consideration you are to give to his testimony such weight as under all of the circumstances you think it is entitled to, his testimony is to be considered with all of the other evidence in the case. You should also consider to what extent if any, the interest any other witness on this trial may have in the result of the case, or in testifying in the manner in which he did, and you are to consider to what extent if any, such interest has any influence upon his testimony. You should apply the same tests as to credibility and weight to the testimony of every witness sworn. The burden of proving the defendant guilty of the offense charged, is upon the State, and before you can render a verdict of guilty, the State must prove to your satisfaction, beyond a reasonable doubt, that the defendant is guilty of the offense charged, every person charged with the commission of an offense is, in law, presumed to be innocent, and that presumption of innocence attends throughout the trial, and prevails at its close, [170] unless, overcome by testimony, which satisfies the jury, of his guilt beyond a reasonable doubt. By proof beyond a

reasonable doubt, is meant such proof as satisfies your judgments as reasonable persons, and applying your reason and judgments to the evidence before you, that the offense charged, has been committed by the defendant, and so satisfies you, as to leave no other reasonable conclusion possible. The reasonable doubt mentioned means, a doubt resting in reason, and it must arise from all of the evidence, or want of evidence fairly and rationally considered, it means an honest substantial doubt, founded in reason and common sense, as applied to the evidence, a doubt for which a reason can be given, arising from either the evidence, or from a want of evidence. In determining the guilt or innocence of the defendant, you should scrutinize the evidence with the utmost care and caution, bringing to that duty, all of the reason and prudence that you would exercise in the most important affairs of life, in fact all of the judgment, care, caution and discrimination that you possess. This is a criminal case, your verdict must be unanimous, two forms of verdict will be submitted to you for your consideration, namely, we the jury find the defendant James Edmund Groppi guilty in manner and form as charged in the complaint, the other, we the jury find the defendant, James Edmund Groppi not guilty. [171] It is for you to determine which one, of such two forms of verdict you will bring in as your verdict. When you retire to your jury room, for your deliberations, let your first order of business be the selection of a foreman, or a forelady, to preside over your deliberations, when you have unanimously agreed upon your verdict, have your foreman, or forelady sign and date the same, and bring it into open Court, while the Court is in session.

(Thereupon jury retired at 1:30).

(Thereupon proceedings were had as follows at 3:30).

Request from Jury for Further Instructions

The Court: The bailiff indicated that the members of the jury had a question to ask the Court, and the legal pad was taken back there to ask what their question was, question handed to me, reads as follows, that at request, "all testimony—of when Father Groppi was picked up in limp position and carried to police patrol wagon." They indicated they want it reread.

Mr. Lauerman: Of course the State's position is, they have heard the facts, all the facts during the course of this trial, to reread any testimony, or give them back at this time, testimony of any given witness, regardless of whether it be for the State or for the defense in this case would tend to high light that testimony, and therefore, no testimony should be reread or given to them.

[172] The Court: Any comment by Mr. Jacobson, repre-

senting the defendant?

Mr. Jacobson: On this particular question Your Honor, I would agree with the State, that testimony should not be broken up from one point in time, especially in line with the fact, there is further testimony on cross examination, that would have to come in regarding from the time that the defendant went limp, until the time he was placed in the paddy wagon, we can't tell from the state of the record, just where on cross examination all those questions would be, and I think that would have to be read to the jury, as well as what was said on direct, that would be the position of the State, and our position as to this specific question, that the jury would have to be told that any testimony read out of context would not be fair to the positions of either the State or the defense.

The Court: All right.

Mr. Jacobson: How you want to handle that, I am not sure Your Honor.

Request from Jury for Further Instructions

The Court: The only problem is, that you have the testimony of one person read back, then the State is going to ask that the portion of another witness be read back, and we will be reviewing the entire testimony, which took us a day and a half to hear. So, you tell the members of the jury, that the testimony heard this morning was [173] very clear as far as the Court was concerned, for both sides, there is no reason for rereading the testimony.

Mr. Jacobson: Why don't you give a copy of that, what you just stated, in writing, so that would only tell the jury, on a written legal pad, which the Court will write out, what should be told, then there would be no comments on the part of the bailiff himself. I think that would be a good way, and both Counsel and I agree, leave the jury impaneled, alone, just so that is read off the legal pad, what the Court's position is on this, we wouldn't have any problem with the hearing, they shouldn't-isn't it true you cannot bring anything, any written matter into the jury room, except what has been marked as evidence, in other words they can't have written statements from the Court or anything-just so it is read off, you only tell the jury the written out portion, that's on the written legal pad, I am sure then, there will not be any paraphrasing. Your Honor, why don't you say, the testimony is already in, and that any part thereof cannot be reread at this time.

The Court: On a legal pad will be the following notation, "the testimony heard this morning was very clear for both sides, and is a part of the record. Therefore, the jury should proceed to deliberate on this matter without the rereading of the testimony." Let the record reflect, that the jury was so informed. I would like to have the [174] Defense Counsel remain here, and the defendant, and the District Attorney, to at least 5 o'clock, then we will go on

from there.

Verdict

(Thereupon proceedings were had as follows at 5:00)

The Bailiff: Your Honor, Bailiff informs me that the jury has reached a decision in this matter.

The Court: And whatever the decision of the jury is, I want decorum on part, of all parties in this Courtroom.

(Thereupon jury returned at 5:00)

The Court: This is in the matter, State of Wisconsin Plaintiff, versus James Edmund Groppi, charged with a State charge, allegedly, violation of 946.41 of the Wisconsin Statutes, resisting an officer. This trial commenced before this Court and jury, on Thursday, February 8th, this date Friday, February 9th, at approximately 1:30 the case was concluded, and the jury deliberated on this matter. It is approximately 5 o'clock. I will ask the members of the jury if they have reached a verdict in this matter.

The Foreman: Yes, we have Your Honor.

The Court: Have you elected a duly elected foreman, or forelady?

The Foreman: Yes, sir.

[175] The Court: Are you foreman, please rise, state your name and address?

The Foreman: Ronald Kruk, 2505 South 8th Street.

The Court: And you are the duly elected foreman of the jury?

The Foreman: Yes, sir.

The Court: Have you reached a verdict in this matter? The Foreman: Yes, Your Honor.

The Court: Do you have that verdict, will you please

read it in Open Court?

The Foreman: We the jury find the defendant, James Edmund Groppi guilty in the manner and form, as charged in the complaint, dated this 9th day of February, 1968.

Colloguy

The Court: Please bring me this verdict. State of Wisconsin, Circuit Court, Milwaukee County, State of Wisconsin Plaintiff, versus James Edmund Groppi, being Case Number G-4718, we the jury find the defendant James Edmund Groppi guilty in manner and form, as charged in the complaint, dated this 9th day of February, A.D. 1968, signed—

The Foreman: I signed it, R. J. Kruk.

The Court: Yes, Foreman. Does the members of—does the Defense Counsel wish to poll the members of the [176] jury? Mr. Jacobson: Yes, Your Honor.

(Thereupon Jury Polled, and all members responded in the affirmative).

The Court: Do either side, starting with the District Attorney, wish to make any comments?

Mr. Lauerman: No.

The Court: Any comments by the Defense Counsel, Mr. Jacobson?

Mr. Jacobson: I am reserving motions after verdict, until Monday at 9, is that correct. I have no comments at this time.

The Court: Pardon?

Mr. Jacobson: I have no comments.

The Court: I wish to thank you for deliberating on this particular case. You're excused at this time, until the date and time that was just read off to you by the clerk. I wish to thank you for doing your civic duty here in this particular case, which of course, is a tremendous responsibility for you to pass judgment on your fellow citizens. So I wish to thank you at this time for your attention, and deliberations on this matter, and you're excused. Thank you very much. This matter will be adjourned at the request

Colloquy

of the defendant, for any [177] motions, written motions, to be filed Monday morning in this Courtroom, at 9 o'clock. So the District Attorney be here promptly at 9, Defense Counsel, the Defendant James Groppi be here for motions, and possible disposition, by way of penalty.

STATE OF WISCONSIN, COUNTY OF MILWAUKEE, 88.:

I, James J. Thurber, Acting Official Reporter of Circuit Court, Milwaukee County, hereby certify that the foregoing constitutes a true, correct and complete transcript of my Stenograph notes of the testimony and other proceedings taken upon the above entitled action.

/s/ JAMES J. THURBER

[1] RAYMOND W. FLEMING
Chief Deputy

FILED

Nov 04 1967

Clerk of Courts Criminal-Misdemeanor Traffic Divisions

CHARGE: RESISTING ARREST

HEARING ON MOTION in the above entitled action held on October 30, 1967, before the Honorable F. Ryan Duffy, Jr., Acting Circuit Court Judge, presiding.

APPEARANCES:

David J. Cannon—Assistant District Attorney, appearing for the State of Wisconsin. Thomas M. Jacobson—Attorney for Defendant. Defendant in Court.

Judith Spanheimer-Official Reporter.

[2] PROCEEDINGS

Mr. Cannon: I understand preliminary procedure is to file a brief today. I understand it was filed and Mr. Lauerman couldn't be here; his wife went to the hospital so I'm just here representing the State.

Mr. Jacobson: This matter was before the Court on October 18th and the Defendant filed an Affidavit of Preju-

dice against Your Honor sitting as an acting Circuit Court Judge. That was the first appearance before Your Honor as a Circuit Court Judge. The matter has been made a Circuit Court matter on October 11th, 1967, when Hugh O'Connell, District Attorney in and for Milwaukee County, filed a Demand to have the County Court proceedings transferred to the Circuit Court and the matter was to be tried as a Circuit Court proceeding. The original appearance before Your Honor was on October 18th after Judge Steffes appointed Your Honor as an acting Circuit Court Judge. At that time, we filed an Affidavit of Prejudice which Your Honor refused. There was discussion as to filing a brief on the matter. The Court set this morning at 9:00 o'clock for the parties to hand in their briefs; that is, the State and the Defense. The Defense had their brief in at ten minutes to 9:00; the State furnished me a copy of their brief at three minutes after 2:00. It is a brief brief, however, and if the Court will permit argument on [3] filing an Affidavit of Prejudice-

The Court: Just by way of background here on this matter. This is an alleged violation of Section 946.41 (1) of the Wisconsin Statutes on August 31st, 1967 and there was an Affidavit—an Affidavit of Prejudice was filed against Judge Seraphim in Branch 4, I believe on September 14th, 1967. Then, the case was transferred to this Court, Branch 12, by lots, and the case was adjourned to September 25th, 1967 in this Branch, No. 12, Misdemeanor—Traffic Division. Then a motion for a Change of Venue was filed September 26th, 1967 and the motion was denied on October 2nd, 1967 and a Jury Trial was demanded by the Defendant and this Court set October 19th, 1967 for a Jury Trial and then an officer of the District Attorney asked that a jury of 12 be demanded on October 11th, 1967, pursuant to

324.17 (9) of the Wisconsin Statutes. Then on October 18th, 1967, the State of Wisconsin asked that the matter be transferred to the Circuit Court to be tried and determined as a Circuit Court action. Then, on October 18th, 1967, the Defendant appeared before this Court, Branch 12, and asked leave to file an Affidavit of Prejudice after Judge Steffes appointed this Court to sit and hear and determine these matters as a Circuit Court Judge. On October 18th, the Court refused to accept the Affidavit of Prejudice for the only reason that [4] I felt the Wisconsin Statutes under these circumstances didn't provide for it but I granted time to this date, October 30th, for both sides to file briefs on the matter and I received a brief by the Defense and a brief by the District Attorney. Will each side want to make an argument on your briefs as submitted here today?

Mr. Jacobson: Well, Your Honor, the Defense brief is purely a statutory argument. The Statute in this matter being a Circuit Court proceeding is 324.17 (9) and it indicates that any party to the controversy may within ten days after notice that a Jury Trial has been demanded, have the matter transferred to the Circuit Court of the county for trial. Now, much of the brief indicates that this statute according to the Defendant's position is civil in nature, that the proceedings in the Civil Court Sections of the Statute provide in criminal misdemeanor cases for two trials. That if the Defendant is not successful in the County Court proceedings trial, it must be turned over to the Circuit Court so the statute is utilized. However, the Statute 324.17 (9), the second sentence indicates as follows: "Upon the filing of such demand for transfer, the Judge of the County Court shall immediately cause the record and proceedings in the matter to be certified to the Circuit Court and the same shall there be tried and determined as

a Circuit Court action," [5] and it proceeds to talk about probate proceedings which really this statute was intended to govern, a probate proceeding. Now, this was when this matter that's before the Court became a Circuit Court matter on the 11th of October when the District Attorney filed this demand to have the matter transferred to the Circuit Court from the County Court and on October 19th. Judge Steffes received the matter, wrote a letter indicating Your Honor was going to be appointed as an acting Circuit Court Judge. We think this is a de novo matter of the time that you became a Circuit Court Judge and we indicated at the outset on October 18th that we were appearing specially on behalf of the Defendant in all proceedings before Your Honor as a Circuit Court Judge and not submitting to the jurisdiction of the Court until this matter of whether you are going to accept an Affidavit is cleared up. We believe that—and in the brief, we point out that if Your Honor takes the position that the County Court proceedings are binding in the Circuit Court Judge, we set up a hypothetical during the last argument before Your Honor, where if you would be sitting as you were originally as a County Court Judge when you received the case on the Affidavit of Prejudice from Judge Seraphim and several motions were filed before you and you denied the motions and then a demand for a jury [6] was made or a right to waive a jury was made in the case and then the District Attorney filed our demand to have the case transferred to the Circuit Court and as soon as Judge Steffes became the acting Circuit Court Judge. According to the logic of Your Honor, if the Court holds the Defendant to only one affidavit because that's what he filed in the County Court proceedings, then to follow that logic further, he would have to take the position then that all proceedings in the County Court become

binding on the Circuit Court and we indicated that logic may seem correct if the same County Court Judge becomes the Circuit Court Judge in the same proceedings. However, we take the position that it is quite clear if Judge Steffes knew, he would have kept the case as a Circuit Court Judge. would not be bound by the County Court Motions when the Statute said that the matter should be tried as a Circuit Court action. Nor, would he be allowed to proceed de novo in the matter of arraignment of motions made before him as he saw the law and then to have a jury trial and proceed in the matter as if nothing had occurred in the County Court. The argument is just that basic on the part of the Defense, this is a de novo matter and that all County Court proceedings became annul on the 11th of October when the demand was filed and the case was transferred to the Circuit Court. And at this [7] point, there is nothing before the Court in terms of an arraignment, that is a plea on behalf of the Defendant in the Circuit Court nor are there any Circuit Court motions that have been filed or is there one affidavit that the Defendant is entitled to in the Circuit Court as an original proceeding.

The Court: Did the State wish to make-

Mr. Cannon: Well, just that there is not such thing as a special appearance in a criminal action, and I think the State's position was stated in Mr. Lauerman's brief. Unfortunately, he can't be here, his wife went to the hospital this morning and he had to go too.

The Court: Well, I have the benefit of his brief anyway. Mr. Cannon: Right.

The Court: In which he stated also that—in communication states, the Defendan cannot now claim he is entitled to file a second Affidavit of Prejudice.

Mr. Jacobson: I don't want to comment on the State's brief, only for the purpose, I'm sure that the deceptiveness and the lack of brevity of the facts prior to the conclusion of the State's brief-as Defense counsel, I don't even want to comment on that, to say that an Affidavit of Prejudice against Chris Seraphim was filed and then was transferred to F. Ryan Duffy in the County Court, and therefore, we can't file a second Affidavit. [8] Somewhere or other the State's recitation of the facts has gotten us up to the date of September 14th and as the Court stated in its recitation of the facts and proceedings on the 25th, the 26th of September, then there was a proceeding on October 2nd, a proceeding on October 6th, a proceeding on October 11th, a proceeding on October 18th. I'm just at a loss to comment on the recitation of the facts as set forth by the State, Your Honor, to make clear that we take the position that the recitation is very deceptive and misleading at best.

Mr. Cannon: Well, there is no statement of the facts in the State's brief. The Judgment Roll will reflect what happened not the State's brief. It's a legal issue, it's not a factual issue. It's nonsense that it's deceptive; the facts are in the Judgment Roll. The whole issue is the only thing to be decided here; there is no quarrel with what the facts are, that's part of the record.

The Court: The only thing that entered my mind is that if the statute provides to receive the Affidavit of Prejudice, there is no question that is what I would do but that statute does not provide for it legally. I told you I didn't think I could accept it so it seems to me that the matter was determined when the case came to Branch 12 by lot, that means my name was drawn after a Writ of Prejudice or Affidavit of Prejudice was filed [9] against Chris Seraphim in Branch 4. Then when the matter went to Judge Steffes, he had the

choice of appointing—retaining jurisdiction or appointing another Circuit Court Judge, but he elected to sit on this particular matter. If another Circuit Court Judge had entered the picture, you might have another question but, however, where the Court, Branch 12, who had the jurisdiction when transferred by lot was selected to try and determine the matter as the Circuit Court Judge, I don't think an Affidavit would lie under these circumstances because you'd be getting the choice of eliminating the two misdemeanor or County Court Judges which I do not think was intended by the Court or by law so I will decline to accept the Affidavit of Prejudice and I will set a date for motions and the date for trial. If you feel that you wish the matter reviewed within another Circuit Court, another Court, why that certainly is within your province.

Mr. Jacobson: Your Honor, I have a-I have a motion prepared at this time wherein I move to dismiss this matter as a Circuit Court proceeding on the basis that Your Honor the Court, as a Circuit Court Judge lacks jurisdiction over the Defendant in that Section 324.17 (9) of the Wisconsin Statutes wherein the instant case has been transferred from Milwaukee County Court to the present Court sitting as an acting Circuit Court is unconstitutional [10] in its application to the present case inasmuch as Your Honor has refused an Affidavit of Prejudice and that it is unconstitutional, that the Defendant's rights are being violated under the 14th Amendment. Now, if Your Honor wants this motion heard on the date when motions are heard, we will not be proceeding to the Supreme Court until this motion has been heard. If Your Honor wants to right now deny the motion, then we would have what we would consider a complete record for purposes of going to the Supreme Court on your writs.

The Court: I will deny the motion to dismiss because of the constitutionality of the statute. I had this in mind here when—may I see my book—

Mr. Cannon: Your Honor, I think you ought to set a date for motion on it. The State hasn't had an opportunity to see the motion.

The Court: It's merely on the constitutionality of the statute which has existed for many, many years, saying I would rather have it tried by another Court.

Mr. Jacobson: If that's Your Honor's intention, that's why I'd like to have him deny it at this time so the record is perfected.

The Court: You ought to make clear what this motion gets at.

Mr. Jacobson: It's primarily-and I want to [11] do this for the benefit of the State to make a complete record here if the Court doesn't want to give time for consideration of brief on this. Your Honor, sitting as an acting Circuit Court Judge at this time, it is our position that you must accept the Affidavit of Prejudice, has denied that Affidavit of Prejudice on the basis of what went on in the County Court. We, therefore, take the position that you are still sitting as County Court Judge and you are not sitting as Circuit Court Judge and the statute if it permits you to sit as an acting Circuit Court Judge and still binds us by our County Court motions, then we take the position that it is unconstitutional in its application, not on its face, but in its application as to the facts of this case as they now stand before Your Honor. That's our position on the record so that we have it very clear because we are going to proceed to the Supreme Court on this matter. We want the Court to know that; we want the State to know that so that we have every opportunity to make the record as they would like prior to our going to the Supreme Court.

Hearing on Motion to Accept Affidavit of Prejudice

The Court: Well, as I say, I am sitting here as Circuit Court Judge appointed by Judge Steffes pursuant to the Wisconsin Statutes. I have denied your motion to dismiss. I have declined to accept the Affidavit of Prejudice because I feel that it is not provided for in [12] the Wisconsin Statutes.

Mr. Cannon: Judge, I would suggest as long as the motion has never been filed that the date be set for it. I don't know what the motion is about except what Mr. Jacobson just said and I think it should be reviewed.

The Court: No, I feel it is within the prerogative of the Circuit Court Judge sitting in the Circuit Court to rule summarily or grant a date for motion. I chose to rule summarily here that the motion should be denied. In the absence of that, I think I will set two dates.

Mr. Jacobson: Your Honor, are you adjourned at this time?

The Court: I will set November 7th for arraignment and any other motions by the Defendant; November 14th for any motions by the State and November 21st, 9:00 o'clock in the morning—

Mr. Jacobson: Could that be in the afternoon at 2:00. I have to be in Racine in the morning every Tuesday.

The Court: What date are you speaking of?

Mr. Jacobson: Well, the 7th, you set everything for Tuesday and I have to be in Racine every Tuesday morning. If you make it at 2:00, I could be here.

The Court: All right. November 7th will be [13] set for the arraignment and any motions, further motions by the Defendant. October 14th, any motions in reply by the State. In the absence of anything, the trial will be set for November 21st at 9:00 in the morning in this Court unless directed otherwise.

Hearing on Motion to Accept Affidavit of Prejudice

Mr. Jacobson: Well, Your Honor, could I ask that the Court begin the trial date other than on a Tuesday morning at 9:00. I have to be in Racine every Tuesday morning. Could you make it at 2:00 or could you make it a Wednesday?

The Court: That's the only date my calendar will permit

for a long time.

Mr. Jacobson: November 21st at 9:00.

The Court: You will just have to arrange your calendar to accommodate this Court.

Mr. Jacobson: I asked the Court if it-

The Court: I have to do it that way, the way my calendar sits as it is.

Okay, that's it.

[14] STATE OF WISCONSIN, COUNTY OF MILWAUKEE, 88.

I, Judith Spanheimer, Official Reporter of County Court, Branch 12, of Milwaukee County, hereby certify that the foregoing constitutes a true, correct and complete transcript of my Stenotype notes of the testimony and other proceedings taken upon the above entitled action.

/s/ JUDITH SPANHEIMER

Stipulation With Reference to Approval of Transcript

Case No. G-4718

It Is Hereby Stipulated by and between the respective parties Thomas M. Jacobson, appearing on behalf of the Defendant-Appellant, and David J. Cannon, appearing on behalf of the Plaintiff-Respondent, that service of a proposed approval of transcript in the above entitled action is hereby waived and that the foregoing transcript of testimony contains all of the testimony and evidence introduced upon the trial of the action, the decision of the trial court announced orally in open court, and argument upon the defendant-appellant's motion for a new trial.

It Is Further Stipulated that the foregoing Approval of Transcript may be signed and settled by the trial judge without further notice to any of the parties.

Dated at Milwaukee, Wisconsin, this 11th day of June, 1968.

- /s/ Thomas M. Jacobson Thomas M. Jacobson
- /s/ E. Michael McCann,
 David J. Cannon
 Asst. D. A. for
 District Attorney Milwaukee County

CERTIFICATE

And because the foregoing evidence, rulings, instructions, exhibits and exceptions do not appear of record, I, the undersigned, the judge who tried said action, and due motion of the signing and settling of the transcript having been waived, do settle and sign this Approval of Transcript to the end that the same may be part of the record herein this 11 day of June, 1968, and I certify that the above and foregoing transcript contains all of the evidence taken, offered, or received on the trial of said action and includes all of the testimony taken, offered, or received on said trial and includes all of the exhibits received on said trial.

F. RYAN DUFFY, JR.
Acting Circuit Judge

Certificate of Transmittal to Supreme Court

I, Francis X. McCormack Clerk of Circuit Court of said County hereby certify that the attached papers are the original records filed and on record in this office in the above action which are necessary to this appeal or writ of error pursuant to Supreme Court Rule One; this certificate is made for the purpose of transmitting these records to the Supreme Court of Wisconsin.

WITNESS my signature and official seal (SEAL) this 3rd day of July 1968

Francis X. McCormack
Clerk

By Rose C. Nugent
Deputy Clerk

Notice of Motion

STATE OF WISCONSIN IN SUPREME COURT

August Term, 1968

State No. 38

STATE OF WISCONSIN,
Respondent,

v.

James Edmund Groppi,
Appellant.

FILED Feb. 1, 1968 Franklin W. Clarke Clerk, Supreme Court Madison, Wisconsin

To:

ROBERT W. WARREN Attorney General State Capitol Madison, Wisconsin

E. MICHAEL MCCANN
District Attorney
Milwaukee County
Milwaukee, Wisconsin

PLEASE TAKE NOTICE that the appellant, James Groppi, shall present the motion, a true copy of which is attached hereto, to the Supreme Court of the State of Wisconsin for a Motion for Rehearing of the above entitled matter which was decided and filed with the Clerk of Supreme Court on the 4th day of February, 1969.

200a

Notice of Motion

Dated at Milwaukee, Wisconsin, this 10th day of February, 1969.

THOMAS M. JACOBSON
110 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

ROBERT E. SUTTON
710 North Plankinton Avenue
Milwaukee, Wisconsin 53203

Jack Greenberg
Michael Meltsner
Haywood Burns
10 Columbus Circle
New York, New York 10019
Attorneys for Appellant

Motion for Rehearing

The appellant above named, James Edmund Groppi, by his attorney, Thomas M. Jacobson, hereby moves that he be granted a rehearing in the above entitled matter.

Dated at Milwaukee, Wisconsin, this 10th day of February, 1969.

Thomas M. Jacobson 110 East Wisconsin Avenue Milwaukee, Wisconsin 53202

ROBERT E. SUTTON
710 North Plankinton Avenue
Milwaukee, Wisconsin 53203

JACK GREENBERG
MICHAEL MELTSNER
HAYWOOD BURNS
10 Columbus Circle
New York, New York 10019
Attorneys for Appellant

Judgment

Be it remembered, That at a term of the Supreme Court of the State of Wisconsin, begun and held at the Capitol, in Madison, the seat of government of said State, on the Second Tuesday of August A.D. 1968, on the 67th day of the term, to-wit: On the Fourth day of February A.D. 1969, Present E. Harold Hallows, Chief Justice, Horace W. Wilkie, Bruce F. Beilfuss, Nathan S. Hefferman, Leo B. Hanley, Connor T. Hansen and Robert W. Hansen, Justices of said Court, the following proceedings were had, Inter Alia, to wit:

STATE OF WISCONSIN.

V.

Respondent,

Appeal from Circuit Court Milwaukee

JAMES EDMUND GROPPI,

County, State of Wisconsin

Appellant.

This cause came on to be heard on appeal from the judgment and order of the Circuit Court of Milwaukee County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment and order of the Circuit Court of Milwaukee County, appealed from in this cause, be, and the same are hereby affirmed.

Chief Justice Hallows concurs.

Justices Wilkie and Heffernan dissent.

State of Wisconsin,

Supreme Court ss.

Judgment

I, Franklin W. Clarke, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original order and judgment of the Court in the above entitled cause, and that it is a correct transcript therefrom, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said court, at Madison, this third day of April, A.D. 1969.

Franklin W. Clarke Clerk of the Supreme Court of the State of Wisconsin

Remittitur

No. 1536

OCTOBER TERM 1968

In

SUPREME COURT STATE OF WISCONSIN

State No. 38

August Term, 1968

STATE OF WISCONSIN,

Respondent,

V.

JAMES EDMUND GROPPI,

Appellant.

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On the 1st day of November, A.D. 1968, the same being the 31st day of the August, 1968, Term of said Court, the following proceedings were had in said cause in this Court:

STATE OF WISCONSIN,

Respondent,

V.

JAMES EDMUND GROPPI,

Appellant.

And now at this day came the said parties herein, by their attorneys, and this cause having been argued by Thomas M. Jacobson, Esq. for the said appellant and by Harold B. Jackson, Jr., Assistant District Attorney, for the said respondent, and submitted, and the Court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

And afterwards to-wit on the 4th day of February, A. D., 1969, the same being the 67th day of said term, the judgment of this Court was rendered in words and figures following, that is to say:

STATE OF WISCONSIN,

Respondent,

V.

JAMES EDMUND GROPPI,

Appellant.

OPINION BY JUSTICE LEO B. HANLEY

This cause came on to be heard on appeal from the judgment and an order of the Circuit Court for Milwaukee County and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment and order of the Circuit Court for Milwaukee County be, and the same are hereby, affirmed.

Justices Heffernan and Wilkie dissent. Opinion filed. Chief Justice Hallows concurs. Opinion filed.

IN

SUPREME COURT STATE OF WISCONSIN

State No. 38

August Term-1968

STATE OF WISCONSIN,

Respondent,

v.

JAMES EDMUND GROPPI,

Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee county: F. Ryan Duffy, Jr., County Judge of Milwaukee county, Presiding. Affirmed.

This appeal arises from an incident which occurred in the city of Milwaukee, on August 31, 1967. Prior to the time of the incident, and more particularly on August 30, 1967, the mayor of Milwaukee, Henry W. Maier, caused an emergency proclamation to issue which ordered that:

"... marches, parades, demonstrations, or other similar activities are prohibited upon all public highways, sidewalks, streets, alleys, parks and all other public ways and public grounds within the City of Milwaukee between the hours of 4:00 o'clock P.M. and 9:00 o'clock A.M., commencing on this date, Wednesday, August 30, 1967, at 4:00 o'clock P.M. and terminating thirty (30) days thereafter."

The appellant (hereinafter referred to as the "defendant") Father James Edmund Groppi, was arrested on

August 31, 1967, for allegedly violating the proclamation during the course of a civil rights demonstration. In the course of his arrest, defendant was alleged to have resisted the arresting officer. This appeal is concerned solely with the charge of resisting an officer. Any reference to the charge resulting from the violation of the proclamation is purely incidental.

Prior to the commencement of the trial on the "resisting" charge, defendant moved for a change of venue on the grounds of community prejudice. The motion was denied on the ground that sec. 956.03 (3), Stats., provided for a change of venue for community prejudice only in felony matters. Resisting an officer is a misdemeanor.

Also prior to trial a subpoena was executed and served which ordered Henry W. Maier to appear to testify on behalf of the defendant on February 8, 1968. That subpoena was subsequently quashed following a hearing which resulted in the trial court's finding that Mayor Maier could not offer any relevant testimony to the case before the court.

After a trial by jury, the defendant was determined to be guilty of resisting an officer. He was fined \$500 and sentenced to six months in the house of correction. Sentence, however, was stayed, and defendant was placed on two years' probation. The appeal is taken from the judgment of conviction and the order of sentence.

HANLEY, J. The defendant presents the following issues on this appeal:

1. Is sec. 956.03(3), Stats., unconstitutional either on its face or as applied in this case?

^{1 &}quot;If a defendant who is charged with a felony files his affidavit that an impartial trial cannot be had in the county, the court may change the venue of the action to any county where an impartial trial can be had. Only one change may be granted under this subsection."

2. May a trial court quash a subpoena which has been properly issued and served upon a witness the defendant desired to call in his defense?

Unconstitutionality of Sec. 956.03(3), Stats.

Appellant claims the change of venue statute is unconstitutional on several different grounds: First, that the statute, on its face, is a violation of due process as guaranteed by the Wisconsin and federal constitutions; second, that the face of the statute violates the equal protection clause of the federal constitution. And, finally, it is contended that the statute was unconstitutionally applied in this case. In all cases, the reason for the alleged unconstitutionality is the same, i.e., that the change of venue based on community prejudice is limited to felony cases.

We think that there is a sufficient difference between a felony and a misdemeanor to warrant the distinction.

"... In most cases the place of imprisonment is different; the statute of limitations is twice as long for a felony as a misdemeanor; one charged with a felony is entitled to a preliminary hearing; the stigma of a felony is greater; and under the repeater statute, more severe penalties are authorized for felonies than for misdemeanors..." State ex rel. Gaynon v. Krueger (1966), 31 Wis. 2d 609, 620, 143 N. W. 2d 437.

Moreover, it would be extremely unusual for a community as a whole to prejudge the guilt of any person charged with a misdemeanor. Ordinarily community prejudice arises when a particularly horrendous crime has been perpetrated. These are the only crimes that receive widespread and prolonged attention from the news media. But the general public just does not become incensed at the commission of a misdemeanor.

The court also takes judicial notice of the vast number of misdemeanors that are prosecuted as opposed to felonies. As a matter of necessity, the prosecution of misdemeanors has been simplified as much as possible by the legislature. This is not because the legislature is not concerned with justice, but because society demands the efficiency in the administration of justice be given consideration along with absolute fairness.

This court faced a decision similar to the one in this case in deciding whether an indigent accused of a misdemeanor was entitled to the assistance of a court-appointed attorney in his defense. At that time the court stated:

"A basic concern of this court must be to strive for greater fairness in the administration of criminal justice. This contemplates protection of the innocent from wrongful conviction, and a concern for the poor as well as for the affluent. A correlative consideration, nevertheless, must be to protect society from burdens that, if intolerable, might impair the administration of justice. Achieving the proper equilibrium between these important considerations inherently requires that standards be established, thus presenting a situation in which it is difficult to achieve an ideal result." State ex rel. Plutshack v. Dept. of Health & Social Services (1968), 37 Wis. 2d 713, 721, 155 N. W. 2d 549, 157 N. W. 2d 567.

The court decided in the *Plutshack* case that counsel should be provided for all indigent defendants who were charged with a crime which was punishable by a maximum sentence of more than six months' imprisonment. This was determined to be a reasonable cutoff point.

It is also important to recognize that in deciding the *Plutshack* case, the court was not faced with a statute which specifically denied the appointment of counsel to indigents charged with misdemeanors. On the contrary, the applicable statute, sec. 957.26,² Stats., had recently been amended³ so that counsel could be provided in misdemeanor cases. Thus the court was free to adopt the sixmonth cutoff.

However, in this case, the applicable statute specifies that a change of venue based on community prejudice shall only be permitted in felony cases. Were we free to adopt our own cutoff point, we would establish it at over six months, as we did in reference to the appointment of counsel. However, we are not willing to say that the cutoff point established by the legislature is necessarily arbitrary and capricious.

The court is aware that two other jurisdictions have considered whether a change of venue based on community prejudice can be limited to felony cases. Both decided it could not be without violating the due process clause of the Fourteenth amendment to the federal constitution.

² "957.26 Counsel for indigent defendants charged with felony; advice by court. (1) A person charged with a crime shall, at his initial appearance before a court or magistrate, be advised of his right to counsel and, that in any case where required by the United States or Wisconsin constitution, counsel, unless waived, will be appointed to represent him at county expense if he is financially unable to employ counsel."

³Ch. 519, Laws of 1965, amended sec. 957.26(1). Previously that section provided for the appointment of counsel only when a defendant was charged with a felony.

⁴ Pamplin v. Mason (5th Cir. 1966), 364 Fed. 2d 1; State ex rel. Ricco v. Biggs (1953), 198 Ore. 413, 255 Pac. 2d 1055.

Those cases are not precedent for this court and their reasoning does not compel us to reach the same conclusion.4a

The United States Supreme Court held in Rideau v. Louisiana (1963), 373 U.S. 723, 83 Sup. Ct. 1417, 10 L. Ed. 2d 663, that a denial of a change of venue, under the circumstances of that case,5 amounted to a denial of due process. That case is distinguishable on two grounds. First, it involved a felony, as does every other case in the area of change of venue which has been dealt with by the Supreme Court. Second, the defendant put into the record his proof of community prejudice which was at least likely to influence the jury. No record of community prejudice was ever made in this case

Sup. Ct. 1444, 20 L. Ed. 2d 491.

In Wisconsin, no misdemeanor is punishable by more than one year of imprisonment.

^{4a} The United States Supreme Court recently considered whether a state could constitutionally deny a jury trial to persons accused of a misdemeanor. Duncan v. Louisiana (1968), 391 U.S. 145, 88

The court held that every person had a fundamental right to a jury trial even in state prosecutions if he was charged with a "serious" crime, whereas no such right existed if a person was charged with a "petty" offense. The court refused to draw a distinct line between a petty offense and a serious offense, but the majority did state that any crime punishable by two years' imprisonmen, or more, was a serious crime. The court further indicated that, under federal law, a crime involving a maximum sentence of six months, or less, was a petty offense. No opinion was expressed as to the classification of those crimes which involved a maximum sentence of more than six months but less than two

⁵ The circumstances in Rideau, supra, were extreme. A twentyminute film and sound track of the defendant's being "interviewed" by the sheriff was shown over television on three separate occasions. During the course of the interview, the defendant admitted robbery, kidnapping and murder. The Supreme Court decided, without examining the transcript of the voir dire, that due process required a trial before a jury drawn from a com-munity of people who had not seen and heard the televised "interview."

Appellant contends that because his motion for change of venue was denied, he had no opportunity to make a record of the community prejudice. This is simply not true. Both the federal and state constitutions guarantee to every accused the right to a fair and impartial trial. A verdict from a prejudiced jury is void whether or not a change of venue or a continuance was requested. On motions after verdict or on a petition for habeas corpus, a person convicted of either a misdemeanor or a felony can offer proof that he was denied his constitutional right of a fair and impartial trial.

The right to a fair and impartial trial is not synonymous with a change of venue. The only connection between a change of venue and a fair and impartial trial is that the former is one method of insuring the latter. Other methods

⁶ Art. I, sec. 7, Wisconsin Constitution:

[&]quot;In all criminal prosecutions the accused shall enjoy the right . . . to a speedy public trial by an impartial jury . . ."

Sixth amendment, United States Constitution:

[&]quot;In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . ."

^{7 &}quot;Petitioner's detention and sentence of death pursuant to the void judgment is in violation of the Constitution of the United States and he is therefore entitled to be freed therefrom. . . ." (Emphasis supplied.) Irvin v. Dowd (1961), 366 U.S. 717, 728, 81 Sup. Ct. 1639, 6 L. Ed. 2d 751.

⁸ This seems to be the only logical conclusion following the decision in *Sheppard* v. *Maxwell* (1966), 384 U.S. 333, 86 Sup. Ct. 1507, 16 L. Ed. 2d 600. The verdict of the jury was set aside based on prejudice even though no motion for a change of venue or continuance was made.

⁹ The express holding of *Irvin* v. *Dowd*, *supra*, seems to be that a statute which denies a change of venue is not unconstitutional, either on its face or in its application, so long as the statute is not relied upon to deny a person his right to a fair and impartial trial.

of insuring a fair trial are voir dire proceedings and continuance.10

The defendant here was not denied due process when his change of venue was denied because of the applicable statute. Should a rare case arise where community prejudice threatens to influence the verdict in a misdemeanor case, the defendant can rely on the antiseptic measures of continuance and voir dire proceedings. In the event that these measures are still not sufficient to provide an impartial jury, the verdict can be set aside after trial based on the denial of a fair and impartial trial.

If the defendant in the present case feels that he was denied a fair and impartial trial (no such claim has been made to this court), the issue can be raised and evidence can be presented on a motion for a new trial based on a denial of a fair and impartial trial.11

Quashing a Subpoena

Defendant also contends that it is unconstitutional to deny to a defendant in a criminal action the right to subpoena any witness even if the witness' testimony is admittedly irrelevant.

The Sixth amendment to the United States Constitution and art. I, sec. 7, of the Wisconsin Constitution guarantee

^{10 &}quot;The remedies in publicity cases are change of venue, continuance, and careful selection of a jury." State v. Woodington (1966), 31 Wis. 2d 151, 166, 142 N. W. 2d 810, 143 N. W. 2d 753.

¹¹ Sec. 958.06(1), Stats., provides:

[&]quot;Within one year after the trial and on motion of the defendant

the court may grant a new trial . . . " (Emphasis supplied.)
The trial in this case ended on February 9, 1968. Some motions after verdict were presented on February 12, 1968, and denied. It does not appear that the presentation of those motions would foreclose the presentation of a motion for a new trial based on an entirely different ground.

to a defendant in a criminal case the right "to have compulsory process" to obtain witnesses in his behalf. This right is now incorporated in the due process clause of the Fourteenth amendment to the federal constitution and applies equally to the several states.¹² It is also worthy of note that there has been no attempt to limit this right to persons charged with a felony.¹³

In this case, the defendant subpoenaed the mayor of Milwaukee. After the subpoena issued, an assistant city attorney, representing the mayor, moved for an order to show cause why the subpoena should not be quashed. The day before the trial a hearing was held on that order. The attorney for the city argued that the mayor had no personal knowledge of any facts which would be material to the resisting arrest charge against Father Groppi. Counsel for the defendant contended that they hoped to establish by the mayor's testimony either that the proclamation was unconstitutional on its face or that it was unconstitutionally issued. The judge took the motion to quash under consideration until the next day.

The following morning, the defendant withdrew a motion to dismiss the charge based on the unconstitutionality of the proclamation because that issue was pending in the federal court and could best be determined there. The trial court then quashed the subpoena because the issue of the unconstitutionality of the proclamation had been withdrawn. The defendant insisted at that point, and during the trial, that he had a constitutional right to call the mayor.

¹² Washington v. Texas (1967), 388 U.S. 14, 87 Sup. Ct. 1920, 18 L. Ed. 2d 1019.

¹³ Sec. 955.04, Stats., provides:

[&]quot;Any defendant shall have compulsory process to compel the attendance of witnesses in his behalf."

The defendant has explained in his brief on this appeal why the testimony of the mayor was relevant to this case:

"... had the defendant been able to demonstrate by the testimony of Mayor Maier that the ordinance under which he was initially arrested was illegally promulgated either because of the procedures used or because it was unconstitutional or because it was applied unconstitutionally there can be no question but that the appellant could have legitimately challenged his arrest as illegal and unauthorized..."

We first determine that a defendant does not have an unqualified right to subpoena witnesses. This right is no more absolute than any of the other rights guaranteed by the constitution.

It is readily apparent that a defendant suffers no constitutional deprivation when he is limited to subpoenaing witnesses who can offer relevant and material evidence on his behalf. The proposition is so apparent on its face that it is difficult to find legal citation to support it. However, at least one English case has considered this precise issue. In King v. Baines (1909), 1 K.B. 258, the defendants, who were demonstrating for women's suffrage, were arrested for breach of the peace and unlawful assembly. They subpoenaed Prime Minister Herbert Henry Asquith and Home Secretary Herbert John Gladstone to testify at their trial. The subpoenas were subsequently set aside upon proof that neither subpoenaed party could give any relevant testimony at the trial. The setting aside of the subpoenas was upheld on appeal.

We think a subpoena is properly quashed when a party is unable to give relevant evidence.

We also decide that the testimony which the defendant sought from Mayor Maier was immaterial to the resisting arrest charge. It is not necessary to decide whether that testimony would have been relevant if the constitutionality of the proclamation was in issue. That issue was specifically withdrawn from this case.

In the absence of some showing by the defendant that the witness was necessary for his defense, the quashing of the subpoena is not a violation of a defendant's rights to compulsory process.

We conclude that sec. 956.03(3), Stats., is constitutional and that the trial court's judgment of conviction and order of sentence were proper.

By the Court.-Judgment and order affirmed.

HEFFERNAN, J. (dissenting) I respectfully dissent from the opinion of the Court insofar as it holds sec. 956.03, Stats., prohibits a change of venue in misdemeanor cases and that such legislative prohibition is constitutional.

To understand what the majority has done, it is necessary to review the facts. It is crystal clear from the record that the defendant moved for a change of venue on the basis of community prejudice. Such prejudice was alleged in the underlying affidavits supporting the motion. The defendant's trial counsel also asked that the court take judicial notice of the "massive coverage by all news media in this community of the activities of this defendant . . . or, in the alternative, that the defendant be permitted to offer proof of the nature and extent thereof, its effect upon this community and on the right of defendant to an impartial jury trial." This motion was denied in its entirety. The reason for such a denial, including the reason for the refusal to hear evidence of prejudice is made clear by the remarks of the trial judge following the denial of the motion.

Counsel asked if the court was denying the motion "because the statute will not permit a change of venue on the grounds of community prejudice" The court replied, "No, I'm denying the motion . . . because this is a misdemeanor case and not a felony. And the Wisconsin Statute does not provide for a change of venue in a misdemeanor matter."

It is thus apparent that the judge refused to hear evidence on community prejudice because he concluded that the statute gave him no jurisdiction to order a change of venue even if community prejudice were shown.

This, I conclude, is a clear error of law, and the statute as so construed was applied unconstitutionally. The statute

is procedural only. It merely specifies the duty of the judge when prejudice is apparent and the defendant is charged with a felony. It is silent upon the duty of a judge in the event one charged with a misdemeanor asks for a change of venue because of community prejudice. The prohibition that the trial judge found, at least by implication, in the

statute is not apparent to this writer.

We have heretofore held, in State v. Nutley (1964), 24 Wis. 2d 527, 129 N.W. 2d 155, overruling, sub silentio, State ex rel. Carpenter v. Backus (1917), 165 Wis. 179, 161 N.W. 759, to the contrary, that a change of venue for community prejudice is a constitutional right independent of the legislative procedural implementation. In Nutley, page 566, we pointed out that the portion of sec. 956.03 (3), Stats., providing, "Only one change may be granted under this subsection," was subject to the due process limitations of the fourteenth amendment to the United States Constitution.

In effect, this court recognized, at least in a felony case, that the power of a court to order a change of venue arose not from the statute but from its inherent power to act to assure a fair trial, and, as required, by the fourteenth amendment.

Are there any reasons why this constitutional assurance of a fair trial by the device of change of venue should be available only to one charged with a felony and not to an alleged misdemeanant?

The majority opinion concludes that it is just and proper to afford fewer constitutional guarantees of fairness to a misdemeanant than to a felon. On the face of it, this proposition runs counter to all principles of Anglo-American jurisprudence; however, factual distinctions, it is contended, make it fair to afford fewer protections to one charged with

a misdemeanor. It is asserted in the opinion of the majority of the Court that the penalties are more severe in the case of felonies. This is, of course, true, but it is a fact entirely irrelevant to the issue. It is, in essence, an assertion that an unfairness that results in only a small sentence is of such a minor consequence as to be de minimis. The mere statement of the proposition is its own refutation. Concededly, the legislature has seen fit to confer additional safeguards to defendants accused of major crimes (preliminary hearing, e.g.); however, it is powerless to reduce the minimum safeguards of fairness that are assured by both the Wisconsin and United States Constitutions to all criminal defendants.

The opinion of the court also asserts that community prejudice is not aroused by the commission of a misdemeanor and that, therefore, a change of venue is needless. The simple answer to this proposition is that if there is no community prejudice, it is within the discretion of the trial judge to deny a change of venue. This determination is dependent upon the facts as they subjectively appear and not upon the objective nature of the crime or whether it is labeled a felony or a misdemeanor. The identity of the defendant and his image in the community is also relevant and may be a determining factor in whether or not there is community prejudice, irrespective of the nature or seriousness of the crime charged. To say that the public is not

¹ The attorney general in his addendum to the district attorney's brief acknowledged that, "Appellant is a controversial figure, but not only in Milwaukee county." While this statement was made by the attorney general to show that a trial in another county might not result in a trial free from prejudice, it is equally probative of the assertion that the defendant could not have received a fair trial anywhere in the state. This, however, is no reason why a change of venue should not have been granted, for under

prejudiced or enraged by the commission of a misdemeanor begs the question. That is precisely what a hearing for a change of venue is intended to determine, and this is what the defendant herein sought to prove. For this Court to decree that prejudice will henceforth not exist in a trial for a misdemeanor is reminiscent of King Canute's edict to hold back the tides.

It is, of course, true that it will be only the unusual and infrequent misdemeanor cases that will become a cause celebre and arouse popular passions. Granting the premise, on which the majority opinion is in part based, that there will be few misdemeanors that will arouse the emotions of the public, how can the rare case so clog the courts with motions for change of venue that the efficient and expeditious disposition of criminal cases will be in jeopardy. The majority opinion's fears are of a bogeyman of court congestion which its own reasoning shows to be without foundation. Moreover, there is no reason why this Court should assume that motions for change of place of trial will be abused or that our courts are so supine as to tolerate such abuse.

While it may be conceded that proceduraly it is within the legislature's power to adopt more expeditious methods of handling misdemeanors than felonies, it may not do so if constitutional rights are thereby encroached upon. The legislature may grant the right to a preliminary hearing to a felon, but not to a misdemeanant, but this right is statutory not constitutional. For example, it cannot, under the

Nutley, supra, this court has decided that the defendant is not remediless after one change of venue. If it developed that a fair trial could have been held nowhere in the state, a motion for continuance would then have been appropriate. The first obligation of the trial court was to consider a change of venue so the defendant could be speedily tried.

aegis of greater efficiency in the administration of justice, deny misdemeanants the right to jury trial guaranteed by the Wisconsin Constitution. While efficiency and economy are of great significance in cases where the courts are free to act one way or the other, they have no place in the situation now before us, where this court, as well as the legislature, is answerable to the Constitution.

The recent United States Supreme Court decision, Duncan v. Louisiana (May 20, 1968), - U.S. -, pointed out that under the sixth amendment and the fourteenth amendment to the United States Constitution petty offenses could be tried before a judge only. The decision of course, does not obviate the necessity for a jury trial for misdemeanors in a state like Wisconsin, where a jury trial is available to all defendants. Duncan, however, makes it crystal clear that a trial, before whomsoever held, must be fair. Justice Harlan, although dissenting in Duncan and agreeing that a state by its own constitution should be able to determine the necessity of a jury trial, stated there were nevertheless certain prerequisites to a system of ordered liberty, one of them being a fair trial. He said, "I should suppose it obviously fundamental to fairness that a 'jury' means an 'impartial jury.'" (P. 181, 182, slip sheet).

In the instant case, a jury is guaranteed by the Wisconsin Constitution, and *Duncan* makes it clear that a jury must be impartial. A litigant is constitutionally entitled to invoke the device of change of venue to determine whether or not a trial may be had free from the contamination of community prejudice. Where the trial of a misdemeanant is before a judge, under Wisconsin law he may file an affidavit of prejudice if he thinks it necessary to assure a fair trial. He should not have a lesser right to a fair and impartial

trial if he invokes his constitutional prerogative of trial by

jury.

Nor is State ex rel. Plutshack v. Department of Health and Social Services (1968), 37 Wis. 2d 713, 155 N.W. 2d 549, 157 N.W. 2d 567, relevant to this case. Contrary to the assertion of the majority opinion, this court, therein, was not influenced or controlled by sec. 957.26, Stats. It was controlled by the rulings of the United States Supreme Court which have been interpreted to mean that there shall be counsel whenever a "substantial sentence" may be imposed. The opinion of the Court in Plutshack was influenced by legislation only to the extent that we concluded that congressional legislation (Criminal Justice Act of 1964) was declaratory of constitutional requirements.

In the instant case we have elevated the legislature's enactment of sec. 956.03, Stats., to the status of a limitation on the constitutional rights of citizens accused of crime. To do so is, I believe, a misinterpretation of a statute the legislature intended to be procedural only and constitutes an abdication of a constitutional responsibility of this Court.

We are herein in no way bound or guided, as we said we were in *Plutshack*, by legislation that appears to us to be declaratory of a proper constitutional standard already found by the Supreme Court of the United States. In the instant case what the legislature had to say about change of venue in felony cases is irrelevant to a constitutional right of an alleged misdemeanant.

This writer is of the opinion that the trial court and the majority of this Court interpreted the statute in such a way as to deprive misdemeanants of important constitutional rights. In State ex rel. Ricco v. Biggs (1953), 198 Or. 413, 255 Pac. 2d 1055, the Oregon Supreme Court,

faced with a similar statute, pointed out that such an interpretation violated the Oregon constitutional guaranty of a fair trial (similar to Wisconsin's), as well as the due process clause of the fourteenth amendment. That court pointed out, as does this dissent, that the legislative enactment does not govern whether a misdemeanant is entitled to a change of venue, for the right to a changed place of trial depends not upon legislative consent but upon the constitutional right of fair trial.

It is the opinion of this writer that the inherent power of a court to order a change of venue for community prejudice is beyond question.

This writer would also conclude that in any criminal case a court of justice has the inherent duty, where the question is raised, to inquire into the matter of community prejudice and to hold a hearing in order to exercise its discretion in respect thereto. This duty is constitutional, not statutory, and in proper circumstances should be exercised sua sponte.

Nor can I agree with the majority opinion's conclusion that even though a change of venue could or should have been granted, a fair trial is still assured by the procedures of the *voir dire* and motions after verdict.

This is hardly an argument for efficient judicial administration for if an atmosphere of prejudice or unfairness can be detected prior to trial, it is folly to spend the public's money on a trial that will be set aside.

No doubt, motions after verdict are useful safety devices to correct error that perhaps has already occurred, but the goal of the proper administration of justice is the avoidance of error. The device of change of venue seeks the avoidance of error.

Moreover, the test of community prejudice is not whether an impartial jury can or cannot be impaneled but whether

there is a "reasonable likelihood" that community prejudice exists. Sheppard v. Maxwell (1966), 384 U.S. 333, 86 S. Ct. 1245, 16 L. Ed. 2d 314.

The American Bar Association Advisory Committee on Fair Trial and Free Press at pages 126, 127, and 128 discussed the efficacy of the *voir dire* as a guaranty of a fair trial:

"It has in many jurisdictions been common practice for denial of such a motion to be sustained if a jury meeting prevailing standards could be obtained. There are two principal difficulties with this approach. First, many existing standards of acceptability tolerate considerable knowledge of the case and even an opinion on the merits on the part of the prospective juror. And even under a more restrictive standard, there will remain the problem of obtaining accurate answers on voir dire-is the juror consciously or subsconsciously harboring prejudice against the accused resulting from widespread news coverage in the community? Thus if change of venue and continuance are to be of value, they should not turn on the results of the voir dire; rather they should constitute independent remedies designed to assure fair trial when news coverage has raised substantial doubts about the effectiveness of the voir dire standing alone.

"The second difficulty is that when disposition of a motion for change of venue or continuance turns on the results of the *voir dire*, defense counsel may be placed in an extremely difficult position. Knowing conditions in the community, he may be more inclined to accept a particular juror, even one who has expressed an opinion, than to take his chances with other, less desirable jurors who may be waiting in the wings.

And yet to make an adequate record for appellate review, he must object as much as possible, and use up his peremptory challenges as well. This dilemma seems both unnecessary and undesirable. . . .

"The suggestion of some courts that . . . [failure to exhaust all peremptory challenges] amounts to a waiver [of a right to transfer or continuance] seems to require the defendant to take unnecessary risks. If the defendant has satisfied the criterion for the granting of relief, it should not matter that he . . . has failed to use his peremptory challenges, perhaps because he prefers the ills he has to others he has not yet seen."

In State v. Nutley, supra, pages 565, 566, this Court accepted the conclusion that a voir dire does not necessarily assure a trial free from the contamination of community prejudice:

"The United States supreme court has held that even if a defendant has examined prospective jurors at length during a voir dire, and even if the jurors state that they will evaluate the issues only on the evidence presented during the trial, a defendant may still be denied a fair trial if prejudicial pretrial publicity is of such quantitative and qualitative magnitude that it is probable that the jurors predetermined the issue despite their protestations to the contrary. This rule of Fourteenth amendment due process is applicable even though the defendant may have received one change of venue, pursuant to a state statute similar to sec. 956.03, Stats."

True, this court has in numerous cases looked to the voir dire to determine that a trial was free from the taint

of prejudice. This technique, while efficacious in some cases, is directed primarily to the question of whether a trial judge abused his discretion in determining that the prejudice alleged or proved was not of such a nature as to prevent a fair trial. Here, abuse of discretion is not in question. The trial judge here relied upon his interpretation of a statute and concluded that he was precluded by law from granting a change of venue. Discretion was not exercised. Hence, the error was one of law and the usual voir dire cases are not directed to the issue raised herein.

Mason v. Pamplin (1964), 232 F. Supp. 539, 540, 541, 542, 543 (Affm'd Pamplin v. Mason (1966), 364 F. 2d 1), a case involving the right of a change of venue in a misdemeanor case where the Texas statute referred only to felonies, stated:

"The record reflects that the prospective jurors, who apparently qualified as a group, stated that they did not know petitioner; that they had not formed any opinions in the case; and that they had no prejudices against the Negro race, or against a Negro acting as counsel for petitioner. No testimony on this question, other than the sworn statement of petitioner's counsel, was offered at the hearing on the motion for new trial. . . .

"Whatever doubt may have existed prior to 1960 with respect to the inherent right of an individual to a change of venue if he demands a jury trial, and it is made to appear that in the county where the prosecution is begun an impartial jury cannot be impaneled, was dispelled by the Supreme Court in Irvin v. Dowd, 366 U.S. 717 . . . , when it recognized the proposition that a transfer may become a necessity, depending upon 'the totality of the surrounding facts.' Such

'totality' cannot be achieved if the court is precluded by law from hearing any competent evidence which may be offered before, during or after trial for the purpose of showing one's inability to obtain a fair and impartial trial in a particular county....

"The hearing on the change of venue is the first and most important step in ascertaining whether or not the accused can receive a fair and impartial trial in the county in which the prosecution is pending. The void which is left when the initial hearing is dispensed with could hardly be filled in a misdemeanor case, any more than it could in a felony case, by the subsequent voir dire examination of prospective jurors in a group, or by producing at a hearing on a motion for new trial testimony the Court has previously refused to hear....

"If the allegations made by [petitioner] had been found to be true [at a venue hearing], he would have been entitled to a change of venue, irrespective of the fact that the jurors themselves as a group indicated that they had no prejudices. As the Supreme Court said in Dowd: 'No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but the psychological impact requiring such a declaration before one's fellows is often its father.' 366 U.S. 717...."

The denial of the defendant's motion, which in the alternative asked for a hearing on community prejudice, denied the defendant (contrary to the assertion of the majority opinion) an opportunity "to make a record of community prejudice." This is true because the judge made it clear that in the case of a misdemeanor, community prejudice was irrelevant to a change of venue—there was just no

statutory authority for such change. In motions after verdict defendant asked for a new trial on the ground, among others, that the court erred in denying the motion for change of venue on the assumption that the statute applied only to felony cases. This motion was again denied. The defendant also asked for a new trial on the ground that the one accorded him was unfair.

The defendant's motion was denied without hearing or explanation. It is apparent that the trial judge, relying on his interpretation of the law, refused to look to the alleged facts of community prejudice, and afforded the defendant no opportunity to make a record.

I would reverse the judgment of the circuit court and order a new trial, directing the trial court that, in the event a motion for change of venue is made, to exercise its discretion to determine whether or not the facts adduced at hearing warrant the granting of a change of venue.

I am authorized to state that Mr. Justice Wilkie joins in this dissent.

Concurring Opinion

Hallows, C. J. (concurring) I concur in the result only of the majority opinion because I believe with the minority that an accused has a constitutional right to a fair trial in misdemeanor cases and to attain that end may have a change of venue if he shows community prejudice. The minority opinion well states the view that sec. 956.03(3), Stats., is regulatory only of this basic right to a fair trial and is not exclusive by implication. The right to a change of venue to secure a fair trial is consistent with my belief that an accused has a constitutional right to an attorney in all misdemeanor cases, which was expressed in Sparkman v. State (1965), 27 Wis. 2d 92, 102, 133 N.W. 2d 776, and again in the dissent in State ex rel. Plutshack v. H&SS Department (1968), 37 Wis. 2d 713, 727, 155 N.W. 2d 549, 157 N.W. 2d 567.

I differ with the minority in its remedy in this case. To these facts I would apply the harmless-error rule as stated in Whitty v. State (1967), 34 Wis. 2d 278, 149 N.W. 2d 557, cert. denied 390 U.S. 959. Not every violation of a constitutional right requires a reversal or a new trial. Prejudice resulting from error or the denial of a constitutional right must be shown. In the instant case, the defendant had no difficulty in selecting and obtaining a satisfactory jury and one which on the record he does not claim was biased or unfair.

The exercise of the constitutional right to a change of venue on the ground of community prejudice is a means to secure an unprejudiced and fair jury so that a fair trial may be assured. If such a saturation of prejudice exists in a community from which the jury is drawn so as to make it difficult to select and obtain an impartial jury, then it is better to change the venue of the case than to

Concurring Opinion

waste time attempting to find an unprejudiced jury. But a juror's knowledge of events is to be distinguished from prejudice or predetermined opinion. One may have knowledge without prejudice. The members of a jury may be informed without the jury being prejudiced. I think also that community prejudice has little or no effect on a witness. The argument that a witness will testify differently in one county than he will in another is unconvincing. No matter where the witness testifies, he must live in the community from which he comes.

On the facts of this case, I see no reason for a reversal.

Order Denying Motion for Rehearing

And afterwards to-wit on the 1st day of April, A.D., 1969, the same being the 87th day of said term, the following proceedings were had in said cause in this Court:

STATE OF WISCONSIN.

Respondent.

V.

JAMES EDMUND GROPPI.

Appellant.

The Court being now sufficiently advised of and concerning the motion of the said appellant for a rehearing in this cause, it is now here ordered that said motion be, and the same is hereby, denied without costs.

Notice of Appeal to the Supreme Court of the United States

STATE OF WISCONSIN

IN SUPREME COURT

August Term, 1968

State No. 38

STATE OF WISCONSIN,

Respondent,

V.

JAMES EDMUND GROPPI,

Appellant.

Notice is hereby given that James Edmund Groppi, the appellant above-named hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Wisconsin entered on February 4, 1969 affirming a judgment of conviction against appellant, rehearing of which was denied in April 1, 1969.

The appeal is taken pursuant to 28 U.S.C. Section 1257 (2).

Appellant was convicted of the crime of registing an officer and was fined \$500.00 and sentenced to six months in the House of Correction which was stayed and defendant placed on two years probation.

The Clerk will please prepare a transcript of the record in this cause and transmission to the Clerk of the Supreme Court of the United States and include in said transcript the entire record before the Supreme Court of Wisconsin.

The following question is presented by this appeal: Whether Section 956.03(3) Wisconsin Statutes violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Thomas M. Jacobson Attorney for Appellant

Certification

I, Franklin W. Clarke, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that the foregoing are true and complete copies of the proceedings before this Court No. 38, August Term, 1968, and of the opinion of this Court in said cause, and constitute all of the record remaining in my custody, the balance of the record referred to in the attached notice of appeal having been remitted to the Circuit Court for Milwaukee County, on the 3rd day of April, 1969.

[SEAL]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Madison, Wisconsin, this 14th day of May, 1969.

FRANKLIN W. CLARKE Clerk of Supreme Court, Wisconsin

Supreme Court of the United States

No. 250 ---- , October Term, 19 69

James Edmund Groppi.

Appellant,

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Wieconsin

APPEAL from the Supreme Court of the State of Wisconsin.

probable jurisdiction is noted and the case is placed having been submitted and considered by the Court, The statement of jurisdiction in this case on the summery celender.

June 15, 1970

Mr. Justice Merabell took no part in the consideration or decision of this matter.